

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY
MARCH 9, 2010

+ + + + +

The Regular Public Hearing
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C. 20001, pursuant to
notice at 10:45 a.m., Marc D. Loud,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman
MERIDITH MOLDENHAUER, Board Member
NICOLE SORG, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS
MICHAEL GUILIANI
ARTHUR JACKSON
STEPHEN MORDFIN

The transcript constitutes the
minutes from the Public Hearing held on March
9, 2010.

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ADJOURN, Chairman Loud

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1 P-R-O-C-E-E-D-I-N-G-S

2 10:46 a.m.

3 CHAIRPERSON LOUD: This hearing
4 will please come to order. Good morning,
5 ladies and gentlemen. This is the March 9,
6 public hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Marc Loud, Chairperson.
9 Joining me today are Mr. Peter May from the
10 Zoning Commission to my right. Good morning.
11 He has joined us and was not part of our
12 decision meeting earlier. Of course, Mrs.
13 Moldenhauer and Ms. Sorg, Mayoral Appointees.
14 To my left Mr. Clifford Moy, Secretary of the
15 BZA. On my far left Ms. Beverley Bailey,
16 Zoning Specialist in the Office of Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door. Please be
20 advised that this proceeding is being recorded
21 by a court reporter and is also webcast live.
22 Accordingly, we must ask you to refrain from

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1 any disruptive noises or actions in the
2 hearing room.

3 When presenting information to the
4 Board please turn on and speak into the
5 microphone first stating your name and home
6 address. When you are finished speaking,
7 please turn your microphone off so that your
8 microphone is no longer picking up sound or
9 background noise.

10 All persons planning to testify
11 either in favor or opposition are to fill out
12 two witness cards. These cards are located to
13 my left on the table near the door and on the
14 witness tables. Upon coming forward to speak
15 to the Board, please give both cards to the
16 reporter sitting to my right.

17 The order of procedure for special
18 exceptions and variances is as follows.

19 Statement and witnesses of the applicant;
20 government reports including the Office of
21 Planning, the Department of Public Works,
22 etc.; the report of the Advisory Neighborhood

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1 Commission; parties or persons in support;
2 parties or persons in opposition; and,
3 finally, closing remarks by the applicant
4 only.

5 Pursuant to Sections 3117.4 and
6 3117.5 the following time constraints will be
7 maintained. The applicant, the appellant,
8 persons and parties except an ANC in support,
9 including witnesses, are allotted 60 minutes
10 collectively. Appellees, persons, and parties
11 except an ANC in opposition including
12 witnesses are allowed 60 minutes collectively.
13 Individuals wishing to testify three minutes.
14 Individuals representing organizations, five
15 minutes.

16 These time restraints do not
17 include cross examination and/or questions
18 from the Board. Cross examination of
19 witnesses is also permitted by the applicant
20 or parties only and, of course, the Board.
21 The ANC within which the property is located
22 is automatically a party in a special

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1 exception or a variance case.

2 Nothing prohibits the Board from
3 placing reasonable restrictions on cross
4 examination. The record will be closed at the
5 conclusion of each case except for any
6 material specifically requested by the Board.

7 The Board and the staff will
8 specify at the end of the hearing exactly what
9 is expected and the date when the parties must
10 submit the evidence to the Office of Zoning.

11 After the record is closed no other
12 information will be accepted by the Board.

13 Again, after the record is closed no
14 additional information will be accepted by the
15 Board.

16 The decision of the Board in these
17 contested cases must be based exclusively on
18 the public record. To avoid any appearance to
19 the contrary the Board request that persons
20 present not engage the members of the Board in
21 conversation. Please turn off all beepers and
22 cell phones at this time so as not to disrupt

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1 this proceedings.

2 The Board will consider any
3 preliminary matters. Preliminary matters are
4 those which relate to whether a case will or
5 should be heard today such as requests for
6 postponement, continuance, or withdrawal, or
7 whether proper and adequate notice of the
8 hearing has been given.

9 If you are not prepared to go
10 forward with a case today, or if you believe
11 that the Board should not proceed, now is the
12 time to raise such a matter. Does the staff
13 have any preliminary matters?

14 MS. BAILEY: Mr. Chairman, members
15 of the Board and to everyone, good morning.
16 Staff does not, Mr. Chairman.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Bailey. Then when you are ready, we should
19 swear the witnesses in. If all persons
20 planning to testify this morning would stand
21 and Ms. Bailey will administer the oath to
22 you.

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1 MS. BAILEY: Do you solemnly swear
2 or affirm that the testimony that you will be
3 giving today will be the truth, the whole
4 truth, and nothing but the truth?

5 WITNESSES: I do.

6 MS. BAILEY: Thank you.

7 CHAIRPERSON LOUD: Thank you, Ms.
8 Bailey. When you are ready you can call our
9 first case.

10 MS. BAILEY: Mr. Chairman, the
11 first case is Application 18039. It's the
12 application of Jason Lefebure and it's
13 pursuant to 11 DCMR Section 3104.1, for a
14 special exception for a rear addition to an
15 existing one-family detached dwelling under
16 Section 223, not meeting the side yard
17 requirements of Section 405. The property is
18 zoned R-1-B. It's located at 1510 Kearney
19 Street, N.E., Square 4010, Lot 44.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Bailey. If the parties are here for the first
22 case, if you could please come forward to the

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1 table. Good morning. If you could come
2 forward to the table. Once seated cut the
3 microphone on. A green light will come on at
4 the base of the microphone if you cut it on
5 correctly. Introduce yourselves for our
6 record.

7 MR. LEFEBURE: Jason Lefebure.

8 CHAIRPERSON LOUD: Good morning.

9 MR. BURKE: My name is John Burke.
10 I'm Jason's architect. I've been admitted to
11 speak before the Board previously.

12 CHAIRPERSON LOUD: Good morning,
13 Mr. Lefebure and Mr. Burke. Let me just jump
14 out and say this at the outset and let my
15 colleagues weigh in. I think that we have a
16 very well put together package supplemented by
17 a well put together report from the Office of
18 Planning.

19 The relief that you're looking for
20 is fairly straightforward relief in terms of
21 the types of cases that we hear weekly. It's
22 what we call Section 223 relief single-family

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1 addition. In this case it doesn't meet the
2 side yard requirement.

3 I would think that it's a case
4 that we can probably rest on the record on but
5 I wanted to ask other Board Members instead of
6 a full-blown presentation perhaps if there are
7 any specific questions that Board Members have
8 of the applicant we can get those out
9 initially so if the applicant can address
10 those specific questions, then perhaps we can
11 move through the case fairly expeditiously.

12 Does that sound like a good
13 approach? All right. Do any Board Members
14 have any specific questions that they would
15 like this applicant to be able to respond to?
16 It doesn't appear such so why don't we turn
17 back to you.

18 You can give us a very brief
19 opening statement. Just describe the relief
20 that you're looking for. As I said, I don't
21 think this will take very long for us to move
22 into deliberation this morning.

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1 MR. BURKE: Mr. Lefebure has a
2 house up in the Brooklyn neighborhood zone R-
3 1-B. The property was built circa 1930.
4 Therefore, before the 1958 zoning regulations
5 went into effect. As a result the width of
6 his property is only 35 rather than the 50
7 that the zoning regulations currently call
8 for.

9 In accordance with that, his side
10 lots do not meet the minimum eight-foot
11 standard. He would like to add on to the rear
12 of the house about 8 feet 11 inches. He would
13 like to not in any way infringe or worsen the
14 side yard condition. He would like to keep
15 the existing house as it presents to the
16 street consistent with character and quality
17 of the neighborhood.

18 CHAIRPERSON LOUD: Thank you, Mr.
19 Burke. Is there anything you wanted to add to
20 that, Mr. Lefebure?

21 MR. LEFEBURE: No.

22 CHAIRPERSON LOUD: All right.

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1 Don't make me say that name one more time,
2 please.

3 In terms of the Office of Planning
4 we do have a copy of your report. It is our
5 Exhibit 26. It's a very well-written report
6 obviously. Is there anything in it that you
7 would like to highlight?

8 MR. GUILIANI: Nothing in
9 particular but I would be happy to answer any
10 questions should the Board Members have any.

11 CHAIRPERSON LOUD: Why don't we
12 see if Board Members have any questions for
13 you. It doesn't appear such. Does the
14 applicant have any questions for the Office of
15 Planning? Again, it doesn't appear such
16 either.

17 We would now go to the ANC for a
18 report. I don't believe we received a report
19 from the ANC in this case so we'll bypass that
20 part of the hearing.

21 If there are parties or persons in
22 support of this application that are currently

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1 in the audience, now would be the time to come
2 up.

3 If there are parties or persons in
4 the audience that are in opposition to this
5 application, now would be the time to come up.

6 Seeing none come up, I just want
7 to note for the record that there is an
8 Exhibit 23 letter from Gary Gregory who is a
9 neighbor. I believe Mr. Gregory lives
10 directly behind the property. In the letter
11 he mentions the fact that there is a deep rear
12 lot sort of separating the addition and his
13 property. He doesn't anticipate any adverse
14 light or air impacts I think is the gist of
15 it. It's a letter in support of the
16 application.

17 With that we turn back to you now
18 for any closing remark and I think we'll be
19 ready to deliberate on this in a few moments
20 if you have any closing remarks. Okay. Thank
21 you for your submission, your appearance here
22 this morning.

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1 As indicated, it's a very well put
2 together application requesting very modest
3 relief. I think we are going to deliberate on
4 this this morning to the extent we need a
5 full-blown deliberation. Is there a Board
6 Member that wants to lead us off in this?

7 MEMBER SORG: I can.

8 CHAIRPERSON LOUD: Thank you, Ms.
9 Sorg.

10 MEMBER SORG: So this is, as you
11 say, Chairman Loud, a rather simple 223
12 application for a special exception to allow
13 a three-story rear addition to an existing
14 one-family dwelling in the R-1-B zone at 1510
15 Kearney Street, N.E.

16 The applicant has provided in
17 their prehearing submissions at Exhibit Nos.
18 7 and 24 very well documented plans showing
19 plans and elevations as well as renderings of
20 the proposed addition.

21 In this case there is no word from
22 the ANC-5A. They didn't submit a report in

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1 this case but, as you mentioned, Chairman
2 Loud, there is support registered by the
3 neighbors at our Exhibit 23.

4 Like I said, this seems to be a
5 very straightforward 223 case for relief not
6 meeting the side yard requirements. The
7 applicant is asking for relief on both side
8 yards but our OP report indicates that
9 actually only relief for the west side yard is
10 required. That is under Section -- I'm not
11 sure.

12 In any case, accordingly, as you
13 mentioned, the OP report is very well put
14 together in this case. Instead of being
15 redundant with its points and analysis I would
16 incorporate that by reference and their
17 recommendation to approval and that's, as you
18 mentioned, also our Exhibit No. 26.

19 So I think, as you said, we can
20 rest on the record in this case which seems
21 very full. I would voice my support for Mr.
22 Lefebure's application and with that open the

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1 deliberations for discussion.

2 CHAIRPERSON LOUD: Thank you,
3 Board Member. Is there further discussion or
4 is there a motion if there is not further
5 discussion?

6 MEMBER SORG: I can make a motion
7 if there isn't.

8 CHAIRPERSON LOUD: Thank you.

9 MEMBER SORG: So I would like to
10 submit a motion in Application No. 18039 of
11 Jason Lefebure pursuant to 11 DCMR 3104.1, for
12 a special exception for a rear addition to an
13 existing one-family detached dwelling under
14 Section 223, not meeting side yard
15 requirements at 1510 Kearney Street, N.E. for
16 approval of the application for relief.

17 CHAIRPERSON LOUD: Thank you. Is
18 there a second?

19 COMMISSIONER MAY: Second.

20 CHAIRPERSON LOUD: Motion has been
21 made and seconded. Any further discussion?
22 Hearing none, all those in favor say aye.

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1 ALL: Aye.

2 CHAIRPERSON LOUD: Is there any
3 opposition and/or abstentions?

4 Ms. Bailey, can you read back the
5 vote, please.

6 MS. BAILEY: With pleasure, Mr.
7 Chairman. It is recorded as four zero one to
8 grant the application. Ms. Sorg made the
9 motion, Commissioner May seconded it, Board
10 Members Moldenhauer and Loud support the
11 motion. Board Member Dettman is not present
12 today.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Bailey. I don't believe there is any
15 opposition so this could be a summary
16 decision. Is that correct?

17 MS. BAILEY: Summary decision.

18 CHAIRPERSON LOUD: Okay. Which
19 means that the applicant would get a written
20 decision in the mail the next couple of days.
21 Thank you for your presentation. Thank you
22 for your patience this morning. If there is

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1 nothing further on this case, I think we can
2 call the next case.

3 MS. BAILEY: Mr. Chairman, the
4 second case of the hearing is the application
5 of Newcomb Child Development Center and the
6 number is 18036 and it's pursuant to 11 DCMR
7 Section 3104.1 for a special exception for a
8 child development center. That's 39 children
9 and 13 staff, under Section 205. The property
10 is located at 541 Newcomb Street, S.E. It is
11 zoned R-5-A. It's located in Square 5985 on
12 Lot 818.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Bailey. I'm going to suggest we go out of
15 order. At least go according to the order I
16 have, perhaps out of order with the version
17 that you might have with the schedule. I
18 actually have the Mark Ewert case as next,
19 18043. If it's okay with colleagues I would
20 like to call that case first because I don't
21 think that case will take as much time as the
22 Newcomb case may take.

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1 MS. BAILEY: As you indicated, Mr.
2 Chairman, Application 18043, Mark Ewert and
3 Steven Stichter and it's pursuant to 11 DCMR
4 Section 3103.2 for a variance from the lot
5 occupancy requirements under Section 403, a
6 variance from the rear yard requirements under
7 Section 404, and a variance from the
8 nonconforming structure provisions under
9 Subsection 2001.3, to allow a rear first floor
10 deck addition to an existing row dwelling.

11 The property is located in the R-4
12 District. It's also located at 401 Rock Creek
13 Church Road, N.W. Square 3236, Lot 46.

14 CHAIRPERSON LOUD: Thank you, Ms.
15 Bailey. I see the applicant has come to the
16 table.

17 Good morning. If the applicant
18 and counsel can state your name for the
19 record.

20 MR. SULLIVAN: Good morning. My
21 name is Martin Sullivan here on behalf of the
22 applicant.

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1 MR. STICHTER: My name is Steven
2 Stichter and I reside at 401 Rock Creek Church
3 Road, N.W. in Washington, D.C. with my partner
4 Mark Ewert.

5 CHAIRPERSON LOUD: Good morning to
6 both of you. Let me state at the outside and
7 disclose fully that I know Mr. Steven
8 Stichter. Mr. Steven Stichter used to work
9 for the D.C. Main Street office and in my
10 other life as Executive Director of Gateway
11 Georgia Avenue, from which I resigned February
12 28th, but Mr. Stichter was our program liaison
13 for our Main Street branch, one of several
14 branches we had.

15 I want to disclose on the record
16 that I do know him and I did work with him for
17 about a year in that capacity. He has not
18 been there, I think, for a couple of years and
19 I don't think there is anything about my prior
20 acquaintance with him that would cause me to
21 be impartial in review of this case, in review
22 of this matter. I did want to disclose it on

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1 the record and give my colleagues an
2 opportunity to ask questions or so on and so
3 forth.

4 COMMISSIONER MAY: Mr. Chairman, I
5 just want to clarify what you said. It
6 sounded like you said that it would not cause
7 you to be impartial. I assume it would cause
8 you to be partial.

9 CHAIRPERSON LOUD: It would not
10 cause me to be partial. Thank you for
11 clarifying that.

12 COMMISSIONER MAY: It may have
13 been my hearing. I just want to make sure I
14 heard the right thing.

15 CHAIRPERSON LOUD: Thank you.
16 Very important point. Words matter.

17 Are there any other questions?
18 Okay. Then given that there are no objections
19 from my colleagues and that I do not believe
20 that the prior acquaintance would cause me to
21 be partial toward Mr. Stichter, or against
22 him, I would like to remain on the case. I

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1 think we can move forward.

2 I think as Ms. Bailey had
3 indicated, this is an area variance request.
4 The property is currently nonconforming at 75
5 percent. It would go up to 97 percent lot
6 occupancy with the proposed addition. The
7 applicant needs to make a case out for the
8 area variance.

9 Why don't we turn to the applicant
10 and ask counsel and/or the applicant to walk
11 us through how the test was made.

12 MR. SULLIVAN: Thank you. Good
13 morning, Mr. Chairman, and Members of the
14 Board. We are requesting three separate area
15 variances as described in our prehearing
16 statement. We do believe that the application
17 safely meets the variance test.

18 On point 1, the unique condition,
19 there are several unique factors so we believe
20 there is a confluence of factors. Chiefly
21 among them is the size of the lot and the size
22 of the home. Can I add an exhibit? I think

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1 I neglected to put it in the prehearing
2 statement which shows a plat showing the
3 surrounding lots on the block and the size of
4 those lots.

5 MEMBER MOLDENHAUER: Just so you
6 know, I think we also have a version of that
7 as part of our OP report, page 2.

8 MR. SULLIVAN: Okay. Thanks. I
9 wasn't sure if you had that. I think this
10 highlights perfectly the impact of the size
11 and I would site a finding from a previous BZA
12 case that says if the lot were as large as the
13 average lot size in the square, there would be
14 no need for a variance in order to construct
15 the deck.

16 That's where our practical
17 difficulty comes in strictly complying with
18 the regulations. A small deck such as this
19 would not be a problem on virtually almost any
20 other lot except the neighboring lot in this
21 square. Also, I would like to point out, of
22 course, that the size of the lot and the size

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1 of the home were as is prior to 1958.

2 Regarding the third prong of the
3 test, no detriment to the public good, we
4 think the addition of the deck is an aesthetic
5 improvement to the lot. We are not aware of
6 any opposition. We expected a letter of
7 support from one of the immediate neighbors.
8 The other immediate neighbor.

9 The other immediate neighbor had
10 expressed orally that she had no opposition.
11 I don't believe she was going to submit
12 anything. We have ANC support. Although the
13 request is for a variance all the way up to 97
14 percent it's really a small deck. It's less
15 than 200 square feet. It's the size of a lot
16 that makes that percentage so high. With that
17 I would move on to testimony of Mr. Stichter
18 if there are no questions at this point.

19 CHAIRPERSON LOUD: It doesn't
20 appear if there are any questions so feel free
21 to move on.

22 MR. STICHTER: Just to add a

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1 couple of -- so I live at 401 Rockcreek Church
2 Road. I've been there for four years and my
3 partner has owned the house for almost seven
4 and is the third owner of the house. The lot
5 is a very small lot particularly in comparison
6 to the neighboring property.

7 Interestingly it's a triangular-
8 shaped lot which also makes a partially
9 triangular-shaped house. While that is an
10 interesting aesthetic, which we enjoy and
11 appreciate, it also constrains the interior
12 size of the house which is part of our desire
13 -- adds to our desire to have useable outdoor
14 space connected to the house.

15 Due to the topography of the area
16 the front door of the house is about 12 steps
17 up from the sidewalk so that the backyard is
18 a full floor above the level of the alley.
19 Due to this and the narrow stairway that leads
20 down to the basement, which would be our
21 access to the backyard combined with the
22 triangular-shaped backyard being right up

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1 against the alley, really limits the use and
2 enjoyment of that lot.

3 To give you a sense of the size of
4 the back lot despite heroic efforts on a
5 couple of times when we were trying to see if
6 our car, a Honda Civic, would be able to fit
7 into the backyard we couldn't park the car
8 there without it obstructing the alley. That
9 is due both to the size and the shape of the
10 lot.

11 We enjoyed entertaining and would
12 like to make use of that space. The deck that
13 is proposed would be right off of the kitchen
14 on the main living space. We have a
15 traditional original layout of the house which
16 we are interested in maintaining but that also
17 leaves us with a small kitchen and space for
18 such uses. It would be a significant addition
19 to us in the kind of living space that we have
20 available and allowing us to use that limited
21 space in the backyard.

22 One item that I wanted to note,

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1 and I'm not sure that it was in the record,
2 there was a deck in existence when Mark Ewert
3 purchased the house. It was a brick and
4 concrete deck that was pulling away from the
5 house and had a crumbling floor. It was a
6 danger and taken down for that reason.

7 We wanted to note on -- we have
8 gone -- I believe you have the statement from
9 the ANC. We went before our ANC earlier this
10 month and the ANC voted to support our
11 application. A neighbor indicated that he was
12 submitted a letter of support.

13 I did meet with the Office of
14 Planning last week and that was a productive
15 meeting so given the size of this lot, the
16 shape of the backyard, we believe that we are
17 meeting the test for this variance and ask for
18 your support in our application.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Stichter.

21 Mr. Sullivan, did you have
22 anything further?

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1 MR. SULLIVAN: No, Mr. Chairman.

2 CHAIRPERSON LOUD: Okay. Board
3 Members, are there any questions for counsel
4 or Mr. Stichter?

5 COMMISSIONER MAY: Just a couple
6 of quick ones. How large was the previously
7 existing deck? Did it cover the entire
8 backyard or did it come out 10 feet from the
9 house or five feet from the house?

10 MR. STICHTER: I believe it was
11 about six week. It did not cover the entire
12 back yard.

13 COMMISSIONER MAY: What is the
14 area that would actually be covered by the
15 roof of the deck? There is a portion of the
16 proposed deck that has a roof on it?

17 MR. STICHTER: Yes, in the
18 drawing. It would be -- it's proposed to run
19 diagonally perpendicular from the side lot
20 line to the corner of the house. It looks
21 approximately half of the area. That
22 placement was chosen specifically to ensure

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1 that there were no drainage issues on the
2 neighbor.

3
4 COMMISSIONER MAY: Okay. That's
5 it. Thanks.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 May. Just one quick question for Mr.
8 Stichter. Currently you would access the rear
9 from the lower level?

10 MR. STICHTER: That's correct.

11 CHAIRPERSON LOUD: As proposed you
12 would access the rear from the kitchen?

13 MR. STICHTER: That's correct.

14 CHAIRPERSON LOUD: What is the
15 room in the lower level that you exit from to
16 access the rear now?

17 MR. STICHTER: It's the basement
18 of the house.

19 CHAIRPERSON LOUD: Is it set up as
20 a den or living area?

21 MR. STICHTER: It's a sort of
22 where our utilities and such are but I would

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1 call it more of a project space rather than a
2 -- it's not a space where -- we certainly use
3 the space but it's not an active part of our
4 standard living quarters.

5 CHAIRPERSON LOUD: I'm not saying
6 that this would amount to a practical
7 difficulty in every case because attorneys
8 read the decisions and blow them wide open but
9 it just sounds kind of strange to prepare all
10 of your recreational meals in the kitchen and
11 then have to go downstairs through this
12 storage and utility area to be able to bring
13 the food out to access the rear yard as
14 opposed to just having that availability at
15 the level of the kitchen floor.

16 Why don't we turn to the Office of
17 Planning. Good morning.

18 MS. BROWN-ROBERTS: Good morning,
19 Mr. Chairman and Members of the Board. I'm
20 Maxine-Brown Roberts from the Office of
21 Planning. I want to get right to your comment
22 about the access issues. I think when we

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1 reviewed the application at first we agreed
2 that there are unique conditions for both the
3 house and the property. We got stuck on the
4 demonstration of the practical difficulty by
5 the applicant. Basically what we took from
6 the submission there is a practical difficulty
7 just because it's a small site. We were
8 looking for a little bit more information.

9 As the applicant stated, he met
10 with us and we did ask them again for some
11 additional information concerning how the
12 internal workings of the house is and how they
13 would get from the upper floor to the lower
14 floor. We do think that is where the
15 practical difficulty lies in what is the
16 layout of the upper floor and how they would
17 move from the kitchen with stuff to access
18 their rear yard and use the rear yard as they
19 want to.

20 As you see in our report, that was
21 some of the things that we think we did have
22 enough information to make that determination

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1 and that was sort of why our recommendation is
2 that we couldn't support the application.

3 We didn't go into an outright
4 denial but just that it was based on the
5 regulations we couldn't support that because
6 we just didn't have the information. Thank
7 you.

8 CHAIRPERSON LOUD: Have you heard
9 anything this morning that would soften the
10 position in the exhibit?

11 MS. BROWN-ROBERTS: I think,
12 again, it goes back to the question that you
13 just asked because that was the same question
14 that we asked, how can you sort of demonstrate
15 to us because we did ask, say, a layout of
16 what it is inside and what is it downstairs so
17 we could make that determination. Yes, I
18 think that's a valid practical difficulty.

19 CHAIRPERSON LOUD: Okay. Thank
20 you. Is there anything in addition that you
21 would like to add to your report?

22 MS. BROWN-ROBERTS: No.

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1 CHAIRPERSON LOUD: Okay. Let's
2 turn to Board Members and see if there are any
3 questions and then we can turn to counsel for
4 applicant. It doesn't look like Board Members
5 have any questions. Mr. May looks like one
6 may be percolating. All right. Does counsel
7 for applicant have any questions for OP?

8 MR. SULLIVAN: No, Mr. Chairman.

9 CHAIRPERSON LOUD: Then at this
10 point we would turn to the ANC for its report.
11 This is ANC-4C. They did submit a report at
12 Exhibit 24. Is anyone here from ANC-4C?
13 There's no one here from the ANC but, as
14 indicated, they did submit a report.

15 It was properly noticed. It had a
16 quorum and it voted in favor of the relief
17 being sought by the applicant so we'll note
18 for our record the great weight for that
19 report. I'm actually looking for a copy. I
20 think once we deliberate I'll mention the
21 specifics of the report but it is, again,
22 Exhibit 24.

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1 Further, if there are persons in
2 support of the application that are in the
3 audience who want to come up and give
4 testimony, you will be given three minutes to
5 do that. If there are persons in the audience
6 who are in opposition, the same three minutes
7 to state your opposition.

8 Seeing none in either regard, I'll
9 just note for the record that we were just
10 handed an exhibit from a neighbor, I believe,
11 in support. Yes, Exhibit 26. It's from
12 Eduardo Suarez and it looks like Neal Pane.
13 In any event, they live south of the property
14 and support the application so we'll note that
15 for our record.

16 Then we turn back to you, Mr.
17 Stichter and/or Mr. Sullivan for any closing
18 remarks.

19 MR. SULLIVAN: Nothing but to
20 respectfully request a bench decision and
21 summary order. Thank you.

22 CHAIRPERSON LOUD: All right.

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1 With that thank you for the presentation.

2 Thank you, OP, for both the report and the
3 openness to getting to the bottom of all of
4 the issues on the table in the case. I think
5 we are ready to deliberate this morning on the
6 case. I'll lead off the deliberations.

7 As indicated it's a proposal to
8 construct roughly a 190-foot square foot deck
9 to the rear of a house which sits on a
10 triangular shape and very small lot. This
11 increases the lot occupancy from the existing
12 non-conforming 75 percent to 97 percent in
13 additional to which it creates a rear yard
14 issue of noncompliance because it doesn't set
15 back 20 feet as required under the
16 regulations. The applicant is here for area
17 variance relief.

18 In terms of making the
19 requirements of the test, the applicant
20 indicates, and I think OP agrees with the
21 applicant on this, that it's a triangular
22 shaped lot. It's at the end of a series of

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1 lots and it abuts the alley. Very small lots,
2 about 972 square feet.

3 The small shape in addition to the
4 triangular sides creates a practical
5 difficulty. We heard a little bit about it
6 this morning. It's also in the pleadings.
7 Most notably that the creation of a deck would
8 relieve this applicant from the inconvenience
9 of having to carry food stuffs to recreate
10 outside from the kitchen upstairs to down
11 stairs through utilities and throughout what
12 they describe as basement sort of downstairs
13 area on every occasion that they recreate
14 outside.

15 There are some additional
16 practical difficulties that some of the other
17 Board Members may want to mention but I think
18 that comes to my mind immediately that it just
19 seems like the interior circulation doesn't
20 flow with that configuration.

21 In terms of meeting the test of
22 whether or not there would be substantial

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1 detriments of the public good, I think the
2 evidence is that there would not be. This is
3 zoned residential already and the use
4 obviously just embellishes the residential
5 use. It's such a small place and this gives
6 them an opportunity to recreate outside. It
7 may put some eyes on the alley which would
8 contribute to the public good.

9 I think overall it's a bit of a
10 close call but I think the extremely small
11 size of the lot, the triangular shape of the
12 lot, its placement at the end of the series of
13 lots, are all factors, a confluence of
14 factors, that create this practical difficulty
15 for the applicant.

16 With that I will open it up to
17 other Board Members for any thoughts.

18 COMMISSIONER MAY: Mr. Chairman, I
19 would just add a couple of things. I would
20 agree certainly that the property is unique.
21 It's triangular. It's small. It's very clear
22 that it passes that prong of the test.

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1 I think that the Office of
2 Planning's report suggest that the objective
3 of being able to make use of the yard can be
4 met by a landing and a stair. I have to say
5 frankly I'm not convinced that would work and
6 provide any substantive useable space. Just
7 to have a landing that is probably 25 square
8 feet. You have a stairs and that's another 35
9 square feet.

10 That's 60 square feet of square
11 stuff that would need to be in a triangular
12 lot connected to a door that is very close to
13 the corner of the triangle. That is going to
14 eat a third or more of the backyard and then
15 drop you down to basically what would feel
16 like an alley space unless you put up a big
17 fence in which case it's not a very pleasant
18 space.

19 I think what is being proposed is
20 very modest. The decking over the entire yard
21 I don't think is of any detriment to the
22 neighbors. I think one might be a little bit

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1 concerned about the portion of it that would
2 have a roof over it but even so because of the
3 position of the house, the fact that if there
4 is any impact on the sun that reaches the
5 property to the north it would be in the
6 afternoon only because of the position of the
7 building.

8 Otherwise, the sun is already
9 restricted by the position of this house
10 compared to the neighbor's house. I think
11 that has been very carefully done. We could
12 have been wrestling with a proposal that had
13 a roof over the entire deck which, I think,
14 would have a much more significant impact on
15 the neighbors.

16 I think given the modesty of it, I
17 think it's an easy call to make. Of course,
18 with due recognition of the Office of
19 Planning's concern about having everything
20 demonstrated effectively to address the
21 regulations. I think it would have been an
22 easier call for them to make if some of these

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1 things were shown, if there was a drawing of
2 a stair and landing to prove that it didn't
3 work.

4 If there were a demonstration of
5 what the defense might do to the useability of
6 that little triangular yard, I think you could
7 prove the case that it would not be practical
8 and probably would have met their test as
9 well. I'm very comfortable proceeding in
10 favor of this.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 May. Is there further?

13 Okay. If there is no further
14 discussion then I would like to move approval
15 of Application No. 18043, request for variance
16 relief, at 401 Rock Creek Church Road, N.W.
17 for a deck addition that does not meet the
18 requirements of the lot occupancy under 403.2,
19 the rear yard under 404.1, and Section 2001.3
20 regarding additions to nonconforming
21 properties.

22 Is there a second?

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1 COMMISSIONER MAY: Second.

2 CHAIRPERSON LOUD: Motion has been
3 made and seconded. Is there further
4 discussion? Hearing none, all those in favor
5 say aye.

6 ALL: Aye.

7 CHAIRPERSON LOUD: I don't believe
8 there is any opposition. Are there any
9 abstentions?

10 Ms. Bailey, if you could read back
11 the full vote.

12 MS. BAILEY: Mr. Chairman, the
13 vote is recorded as four zero one to grant the
14 application. Mr. May made the motion -- I'm
15 sorry, Mr. Loud made the motion, Commissioner
16 May seconded the motion, Mrs. Moldenhauer and
17 Ms. Sorg support the motion. Board Member
18 Dettman is not present.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Bailey. Thank you to the applicants. Thank
21 you very much to the Office of Planning as
22 well. I do believe we can do a summary.

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1 MS. BAILEY: A summary order it
2 is, Mr. Chairman.

3 CHAIRPERSON LOUD: Okay. We'll do
4 a summary order. You'll get the decision in
5 a couple of days. Thank you.

6 I believe we have one final case
7 this morning which is the Newcomb case. I'm
8 going to need to break for just two seconds to
9 get my file. I thought I had gotten it
10 earlier but apparently I did not.

11 In the Newcomb case is there
12 anything to set up in the case? Okay.
13 Nothing to set up. I see Commissioner
14 Cuthbert. Good morning. How are you? Is the
15 ANC going to submit a written report? You did
16 submit a written report?

17 Okay. Before we get started let
18 me double check to make sure that all of us
19 have copies of that. I don't believe I have
20 a copy so do you have a copy? Okay. Mr. May
21 definitely has a copy. Some of us have copies
22 and some of us don't so we are making sure

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1 that everybody has a copy. As we do that
2 we'll take a break for about two minutes. I'm
3 going to go get my file and I'll be right
4 back.

5 (Whereupon, at 11:27 a.m. off the
6 record until 11:31 a.m.)

7 CHAIRPERSON LOUD: Please excuse
8 our delay. I think we are ready to move
9 forward. Just, as I said, there were some
10 pleadings that came in yesterday. In fact,
11 some came in around 4:00 p.m. yesterday and we
12 had copies. Some of had copies of some and
13 did not have copies of others but I think we
14 are all in the same position now. We have
15 everything we need.

16 Have we called this case? If not,
17 perhaps until Ms. Bailey comes back you can
18 help us out.

19 MR. MOY: I can do that.

20 CHAIRPERSON LOUD: Okay. Thank
21 you.

22 He's going to call the case and

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1 once he calls the case then you can come
2 forward.

3 MR. MOY: That would be
4 application number 18036 of Newcomb Child
5 Development Center pursuant to 11 DCMR 3104.1,
6 for a special exception for a child
7 development center. This is for 39 children
8 and 13 staff under Section 205, in the R-5-A
9 District at premises 541 New Comb Street, S.E.
10 The property is in Square 5985, Lot 818.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Moy. If we could have the parties who are at
13 the table this morning introduce yourselves
14 for our record.

15 MR. SPIKES: Harry Spikes,
16 representative of Newcomb Day Care.

17 MS. CANNON: Andrea Jackson
18 Cannon, Executive Director.

19 MS. SPIKES: Patricia Spikes,
20 Director, Newcomb Child Development Center.

21 MS. CUTHBERT: Mary Cuthbert,
22 Chair for Advisory Neighborhood Commission 8C

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1 and Single Member District 8C-03.

2 CHAIRPERSON LOUD: Good morning to
3 each of you. Thank you for your presence this
4 morning. I believe we are here on the
5 application for now 39 young people and 13
6 staff.

7 MR. SPIKES: Yes, sir.

8 CHAIRPERSON LOUD: It's not
9 necessarily a follow-on to the earlier hearing
10 we had for about 72 or 72, I forget exactly
11 what it is, but, nonetheless, I think that you
12 are prepared to move forward and establish a
13 case under Section 205 if the requirements are
14 met?

15 MR. SPIKES: Yes.

16 CHAIRPERSON LOUD: Okay. Then why
17 don't we turn it over to you for your
18 presentation and then Board Members I'm
19 certain have some questions that they would
20 like to get into.

21 MR. SPIKES: Thank you.

22 MEMBER MOLDENHAUER: Could I just

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1 ask a preliminary question --

2 CHAIRPERSON LOUD: Yes.

3 MEMBER MOLDENHAUER: -- that you
4 may be able to address? Chairman Loud and
5 also Mr. Moy mentioned that the notices were
6 for 13 staff but in your recent submission No.
7 30 you referenced 14 staff. If you can just
8 clarify that point when you provide the
9 presentation, that would be great.

10 MR. SPIKES: I will leave that up
11 to the director to make those clarifications.
12 First of all, I would like to say that we have
13 planned to come here with the binders and
14 everything filed prior to the hearing in
15 sufficient time for you to make the review.
16 We was unable to do that so I apologize for
17 not coming here to impress you with that.

18 We did file some material
19 yesterday which was the day before this
20 hearing, of course, and we have received from
21 the District of Columbia Immunization Program
22 100 percent approval of immunization shots and

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1 that was received by us on the 5th of March,
2 which was Friday. The earliest time we could
3 have gotten that to you was yesterday so we
4 got that to you yesterday.

5 Some of the material that we have
6 given you is material that we have to rely on
7 the District and other sources to provide us
8 in order for us to provide you to show
9 compliance with some of the requirements that
10 may have been part of the consideration of
11 your not approving us the last go ground.

12 I think I would be better to
13 answer whatever question the Board may ask
14 except to the point that based on what we have
15 filed with you we have met all of the
16 requirements of the licensing in the District
17 of Columbia regulation as far as maintaining
18 and operating Newcomb Day Care on Newcomb
19 Street.

20 Those deficiencies that were cited
21 at the last hearing have all been taken care
22 of to the extent that they have been abated.

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1 We are not here to debate whether some of
2 those things that were cited as deficiencies
3 were, in fact, deficiencies.

4 For example, with the immunization
5 shots, as we explained in our presentation,
6 the doctors were the individuals who would
7 determine when those immunization shots were
8 proper and when they were to be given. It
9 would be based on the -- the doctor would base
10 it primarily on the health of the child at the
11 time the child is being examined, the previous
12 shot the child had been given, and when would
13 be the appropriate shot at the appropriate
14 time, the next shot.

15 The reason we fell in a gray area
16 in that particular instance is that when the
17 District prepares a document that give us a
18 deadline and time certain for those shots to
19 be given, that deadline and time certain may
20 defer from that of the doctor so, therefore,
21 if a child goes to the doctor and the doctor
22 say, "Your previous shot was in March," and if

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1 the schedule that the District give us say the
2 shot should be given in July, the doctor may
3 determine that the shot may need to be given
4 in August.

5 So with that being the case that
6 the District come out to examine the records,
7 the District will see that the child has not
8 been given a shot but that would not be
9 because we did not make the child available
10 for the shot and it would not be because the
11 parent didn't know that the child did not or
12 did need the shot. It would be the doctor's
13 determination so that's how we fell into an
14 area gray in that respect.

15 In another respect we had a
16 situation dealing with the fingerprint for
17 verification of the criminal background
18 search. We fell in a gray area there, too,
19 but that area, as I said, I'm here to debate
20 deficiencies, what we did in effect was to
21 take the original documents for the
22 fingerprints and the verification of the

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1 criminal background search and we kept those
2 in a separate folder and we put the copies in
3 the folder for the employee.

4 When the monitor came out to
5 examine the file, the monitor came to
6 understand that we had copies of the results
7 in the file rather than the originals. The
8 reason we put copies in the file is that we
9 didn't want anyone to go into the employee
10 file and take the police results, the criminal
11 background search results, and modify them to
12 fit their specification and, therefore, there
13 would be an action of falsifying records.

14 What we did was to keep the
15 originals in a safe place under security. Now
16 we have revamped that practice and we have
17 everything available for the monitors. Should
18 the monitors come out she or he would be able
19 to examine those documents on site without any
20 encumbrances. So we covered the shot records
21 and the immunizations.

22 We have a situation dealing with

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1 staff. We had a problem as far as staff
2 health certificates are concerned. There,
3 again, I will say to you that we may have
4 really fallen short in that respect in the
5 previous process. We fell short in that we
6 will always explain to our staff within
7 sufficient time to get an updated health
8 certificate before the present health
9 certificate expires.

10 What happened is that when the
11 staff would go to the doctor, the doctor would
12 say, "Well, we can't see you today," or "We
13 have to postpone the examination."
14 Unfortunately, we would have scheduled the
15 examination so close to the expiration date of
16 the health certificate that the health
17 certificate could very well expire before a
18 new health certificate is issued.

19 What we are in the process of
20 doing now, and have done this, is made
21 arrangements so that we would have our staff
22 to visit a doctor in a time sufficient

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1 irrespective of any postponements of the
2 examination to get an examination that would
3 be the consequence of a health certificate
4 that would be within the framework and within
5 the time period of a non-expired health
6 certificate.

7 That being the case, we have
8 placed the health certificate in good standing
9 as far as they are not expiring before we get
10 a new health certificate. We have a situation
11 with parking and I think the documentation
12 that you have explains that all of our
13 employees expect to live in the adjacent
14 community, some in walking distance and others
15 who catch the bus, and we have two employees
16 who drive.

17 There is ample parking provision
18 on Newcomb Street for those two individuals
19 who drive. The yard in Newcomb Street is used
20 for recreation for the kids but the hilly area
21 and the terrain is such that it would be
22 practically unfeasible to erect a parking

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1 space there.

2 Even if we did it would cause a
3 hazard as far as the alley is concerned
4 because the alley is no narrow and the
5 pathways in which the cars would come in and
6 out would cause a problem because the decline
7 is so steep that on a snowy day the cars may
8 just slide out of the parking area.

9 Beyond that, Mr. Chairman, I don't
10 know what else to add unless you have
11 questions for me.

12 CHAIRPERSON LOUD: Mr. Spikes?

13 MR. SPIKES: Yes, sir.

14 CHAIRPERSON LOUD: Thank you, Mr.
15 Spikes. I appreciate the transparency and the
16 stepping up to the plate regarding
17 acknowledging some of the things in the past.
18 I have a couple of questions just so I can
19 make sure I understand what I'm looking at
20 here and what we've marked Exhibit 30. In
21 terms of the criminal background checks for
22 all staff and then what's attached later I

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1 guess the representation is being made that
2 those are all of the staff for which criminal
3 background checks were at issue in the earlier
4 hearing. I'm looking at Patricia Spikes and
5 there are some other names here. I kind of
6 want to get a sense of what it actually is
7 that I'm looking at.

8 MR. SPIKES: I think Ms. Spikes
9 can explain that.

10 MS. SPIKES: In reference to the
11 criminal background checks previously before
12 we were required to have FBI background checks
13 we got criminal background checks before
14 anyone started working at Newcomb.

15 With the FBI reports, the copy of
16 the fingerprint is what we actually do on the
17 card. Then we send it off. The second sheet
18 comes back, it could be months later or weeks
19 later, stating whether, you know, no arrest
20 record was found on this person.

21 Included with the background
22 checks you might see a receipt. What that

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1 means is the employee had the FBI check done
2 but the result has not returned. We have no
3 control over how long the FBI will send the
4 results back so that's what these forms mean.

5 CHAIRPERSON LOUD: Well, again,
6 just for the record so that when we move to
7 deliberation I'm really clear on what I've
8 reviewed. Just taking a look at Sadan
9 Elizabeth Bibb there are obviously a lot of
10 fingerprints on it.

11 MS. SPIKES: Yes.

12 CHAIRPERSON LOUD: Then there's a
13 page attached to it that says applicant at the
14 top and then at the bottom it's stamped, "No
15 arrest record April 25, 2009."

16 MS. SPIKES: Yes.

17 CHAIRPERSON LOUD: That would mean
18 that for her she was cleared as of April 25.

19 MS. SPIKES: Yes.

20 CHAIRPERSON LOUD: Then the reason
21 that would not have been part of the record in
22 the earlier case, which was after April 25,

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1 2009, it was just a question of records
2 maintenance?

3 MS. SPIKES: No. When the monitor
4 came out what happened was some of the reports
5 that came back some of them had not returned
6 and then we had copies in the file. As the
7 monitor explained to me, they wanted the
8 original copies in the file because apparently
9 at other centers there had been paperwork
10 taken out of -- people's actual FBI reports
11 had been removed from their file so they
12 required the originals to be in the file
13 instead of the copy.

14 CHAIRPERSON LOUD: Okay.

15 MS. SPIKES: Because that way they
16 could see that it was date stamped in the
17 second page. Instead of a Xerox we would
18 actually have the stamp from the FBI.

19 CHAIRPERSON LOUD: Okay.

20 MS. SPIKES: And then the
21 fingerprint actually has that -- it's a card
22 that they actually put the fingerprint on.

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1 CHAIRPERSON LOUD: Okay.

2 MS. SPIKES: And so there were a
3 couple of employees where we had the Xerox
4 copy instead of the original in the file and
5 so we were written up for that.

6 CHAIRPERSON LOUD: And then once
7 these background reports are completed that's
8 it.

9 MS. SPIKES: Yes.

10 CHAIRPERSON LOUD: In other words
11 they don't have to be updated annually?

12 MS. SPIKES: No.

13 CHAIRPERSON LOUD: Okay.

14 MS. SPIKES: It doesn't require
15 that, no.

16 CHAIRPERSON LOUD: Some of these
17 are from 2008.

18 MS. SPIKES: Yes.

19 CHAIRPERSON LOUD: I want to make
20 sure that we are all on the same page.
21 Normally we probably wouldn't even dig this
22 deep but it's just because of the information

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1 that came out of the previous hearing that we
2 have to make sure our record is really full.

3 So then, for example, you're
4 saying now that for Latasha Young that she has
5 a current valid background check?

6 MS. SPIKES: Yes, sir.

7 CHAIRPERSON LOUD: And that's your
8 sworn testimony under oath?

9 MS. SPIKES: Yes, sir.

10 CHAIRPERSON LOUD: And you are
11 saying the same thing for Bronwyn Honesty?

12 MS. SPIKES: Ms. Honesty her FBI
13 clearance has not come back but her police
14 clearance that she's had for -- you know,
15 we're still waiting on her FBI to return.

16 CHAIRPERSON LOUD: Okay. And,
17 again, under oath you're saying that for Gayle
18 Tremer she has a clearance?

19 MS. SPIKES: Yes, sir.

20 CHAIRPERSON LOUD: Okay.

21 MS. SPIKES: Ms. Gayle, if you
22 look at hers, this is a receipt where she

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1 actually had her fingerprints done in October
2 '09 but she is still waiting on her actual
3 report from the FBI.

4 CHAIRPERSON LOUD: Okay.

5 MS. SPIKES: So I attached her
6 police clearance so that you would know she
7 originally had a police clearance but we are
8 now waiting for the FBI.

9 CHAIRPERSON LOUD: Okay.

10 MS. SPIKES: In her case the FBI
11 actually sent her a form to complete about
12 three weeks ago so we are waiting on her
13 return.

14 CHAIRPERSON LOUD: Okay. But at
15 least you followed up and you've taken the
16 steps and you are trying to get the
17 information back on the FBI.

18 MS. SPIKES: Yes.

19 CHAIRPERSON LOUD: No need to do
20 this but I just want to go through all of the
21 ones that you've submitted.

22 MS. SPIKES: Okay.

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1 CHAIRPERSON LOUD: Cathy Williams
2 you are saying that you have a proper FBI
3 background check for her?

4 MS. SPIKES: Yes, sir.

5 CHAIRPERSON LOUD: Okay. That's
6 your testimony under oath. For Sanitra
7 Haynesworth you have the fact that she's
8 applied for it and you are waiting to get that
9 back.

10 MS. SPIKES: Yes.

11 CHAIRPERSON LOUD: Okay. I think
12 we've covered Elizabeth Bibb.

13 MS. SPIKES: Yes.

14 CHAIRPERSON LOUD: You have the
15 clearance for her.

16 MS. SPIKES: Yes, sir.

17 CHAIRPERSON LOUD: Okay. For
18 Ranisha Roury?

19 MS. SPIKES: Roury.

20 CHAIRPERSON LOUD: Okay. You are
21 waiting for Ranisha Roury.

22 MS. SPIKES: Yes, sir.

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1 CHAIRPERSON LOUD: Okay. For
2 Patricia Spikes that has come back and has
3 been cleared.

4 MS. SPIKES: Yes.

5 CHAIRPERSON LOUD: Okay. I think
6 I understand that part of our record a little
7 bit better. Now, on the immunization piece
8 you have submitted something that says that
9 there is 100 percent compliance with
10 immunization.

11 MS. SPIKES: Yes, sir.

12 CHAIRPERSON LOUD: So it's your
13 testimony under sworn oath here today that
14 this document is evidence of the 100 percent
15 compliance.

16 MS. SPIKES: Yes, sir.

17 CHAIRPERSON LOUD: In fact, it has
18 in the column for overdue zero percent and in
19 the column for compliance it has 100 percent
20 for 34.

21 MS. SPIKES: Yes, sir.

22 CHAIRPERSON LOUD: You do have 39.

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1 MS. SPIKES: Yes. We just
2 recently got a couple of new kids.

3 CHAIRPERSON LOUD: So the variance
4 between the 34 compliant and the 39 is that
5 you've got five new kids?

6 MS. SPIKES: Yes, sir. Five new
7 kids. We just got them last week.

8 CHAIRPERSON LOUD: You have five
9 new last week. In terms of the follow-up
10 procedures of planning for those five, what
11 are the actions that are underway?

12 MS. SPIKES: They can't begin day
13 care unless they have their immunizations so
14 they are up to date as of the date that they
15 started. They have to bring in their
16 immunization record from the doctor. Three of
17 the children are infants three months old so
18 they can't. License don't allow you to accept
19 them into your center unless they have
20 immunizations. Two of them are 14 months old
21 so they all have current immunizations.

22 CHAIRPERSON LOUD: So, again, just

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1 so I understand it, you're seeking the zoning
2 relief of 39. You have 39. Thirty-four of
3 them you have the documentation for
4 immunizations. The other five they are so
5 recent they have been immunized you just don't
6 have the documentation.

7 MS. SPIKES: No, I have the
8 documentation. They can't enter the center --

9 CHAIRPERSON LOUD: Is that here?
10 Okay. Is that part of what you submitted for
11 our record?

12 MS. SPIKES: No. What I submitted
13 to you were the children that were already in
14 the center and every year we have to submit
15 their records to the Department of Health.

16 They review it and they are the
17 ones that determine what shots the children
18 would need and then once the children submit
19 the health records to me, then I send it back
20 and they are the ones that determine the
21 percentage that we've met. They are the ones
22 that sent me the sheet stating that we have

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1 the 100 percent at the 34 children. Then we
2 just got the new children last week.

3 CHAIRPERSON LOUD: Okay. So it
4 wouldn't be any kind of burden on you to
5 provide us with documentation that those five
6 have been immunized properly.

7 MS. SPIKES: No, sir.

8 CHAIRPERSON LOUD: Okay.

9 MS. SPIKES: I could have that
10 faxed to your office here if you want.

11 CHAIRPERSON LOUD: Okay. For me
12 that would be helpful.

13 MS. SPIKES: Okay.

14 CHAIRPERSON LOUD: The fire
15 inspection approval, okay. I'm clear on that.
16 The staff health certificate I think is
17 something that Mr. Spikes went into in his
18 discussion but I don't see it mentioned in
19 your report. Is it above and beyond what was
20 covered in the report?

21 MR. SPIKES: It wasn't that, Mr.
22 Chairman. It's Ms. Cuthbert. She policed us

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1 pretty diligently and she wanted us to be
2 above the requirements of the license and the
3 Board. I mention that because I want to
4 mention anything that the Board may have an
5 interest in and to assure the Board that we
6 are trying to move forward.

7 CHAIRPERSON LOUD: Okay. Is it
8 the sworn testimony under oath of your
9 witnesses, Mr. Spikes?

10 MR. SPIKES: Yes.

11 CHAIRPERSON LOUD: I'm not sure
12 which one would be the appropriate one. That
13 all of the background checks that are required
14 are either completed per this exhibit or in
15 process for this exhibit. Are there any
16 persons that are not covered by what's in this
17 exhibit that would need to have background
18 checks?

19 MS. SPIKES: No, sir.

20 CHAIRPERSON LOUD: Okay. Then
21 it's your sworn testimony under oath?

22 MS. SPIKES: Yes, sir.

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1 CHAIRPERSON LOUD: Okay. All
2 right. Then we have this issue of the parking
3 variance. That's something that came up at
4 the previous hearing. I think OP mentioned it
5 in its report and you have now included it in
6 this filing which is dated March 4. I don't
7 know if you mentioned it before March 4 but I
8 know that it's part of this filing now.

9 In terms of how we would normally
10 handle that, and I encourage the weigh-in of
11 my colleagues as well, is that typically for
12 the variance relief -- let me back up. If an
13 applicant request variance relief and then
14 during the course of the hearing it becomes
15 apparent that additional special exception
16 relief is necessary or they really need a
17 special exception, not a variance, we will
18 allow them normally to amend on the record and
19 we'll continue forward with the case.

20 But when an applicant begins with
21 special exception relief and then has a need
22 to amend it to require the greater relief for

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1 variance because it's a higher standard, we
2 typically request that they renote the case
3 requesting the variance relief so that all of
4 the persons that got notice regarding the
5 special exception get notice regarding the
6 variance.

7 In fact, we have a case very
8 similar to yours this afternoon there that
9 very thing happened. It kind of puts me,
10 perhaps all of us, in a bit of an awkward
11 situation because we have a CDC that had to
12 amend for variance parking relief in an
13 earlier case.

14 We required them to go through the
15 regular process to do that which is to
16 renote the case, and we now have your
17 application which has taken into consideration
18 this variance request and it has not been
19 noticed to anybody in the community as a
20 variance case.

21 MS. CUTHBERT: Mr. Chairman?

22 CHAIRPERSON LOUD: Yes.

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1 MS. CUTHBERT: I do want to say on
2 Newcomb Street where this facility is located
3 there is plenty of street parking.

4 CHAIRPERSON LOUD: Okay.

5 MS. CUTHBERT: That's why we did
6 not address the parking. There is a lot of
7 free parking on the street where this facility
8 is located.

9 CHAIRPERSON LOUD: Thank you. I
10 think that is very helpful and I think they
11 have also submitted information on the record
12 regarding most of the client community walking
13 to the facility and the like. Nonetheless, I
14 think with the advice of my colleagues and
15 perhaps counsel we are going to have to
16 address that issue at some point during the
17 hearing.

18 MEMBER MOLDENHAUER: I have a
19 couple of questions. One of the questions I
20 asked initially so I guess, Ms. Spikes, if you
21 can address this, was the 13 versus 14 staff.
22 Do you currently have 14 or 13 staff members?

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1 MS. SPIKES: No. Currently we
2 don't have 13 or 14.

3 MEMBER MOLDENHAUER: How many
4 staff do you currently have?

5 MS. SPIKES: Currently we have 10
6 because two just recently left.

7 MEMBER MOLDENHAUER: So before the
8 two left you would have had 12?

9 MS. SPIKES: Yes.

10 MEMBER MOLDENHAUER: Okay. So but
11 you are looking for 13 or 14? What is the
12 total number of staff that you are actually
13 looking for in the application?

14 MS. SPIKES: I think previously we
15 asked for 14 because we were anticipating an
16 increase in the number of children is why we
17 asked for 14. That is my recollection is why
18 we had 14 previously.

19 MEMBER MOLDENHAUER: So you are
20 currently still then just simply seeking 13,
21 not 14?

22 MS. SPIKES: Yes.

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1 MEMBER MOLDENHAUER: Okay. I just
2 wanted to make sure that we understand the
3 exact number. You said that you have 10 staff
4 members and that two just left.

5 MS. SPIKES: Yes.

6 MEMBER MOLDENHAUER: The list that
7 I wrote down from the criminal background
8 checks we only have eight individuals
9 identified under the criminal background
10 check. Who are the additional two individuals
11 that are not in the packet that we have?

12 MS. SPIKES: Angela Jones. She's
13 coming from Queen Street. She's an employee
14 of Newcomb, another facility.

15 MEMBER MOLDENHAUER: Okay, Ms.
16 Jones.

17 MS. SPIKES: Angela Jones and Kim
18 McCray, also an employee from Newcomb.

19 MEMBER MOLDENHAUER: Why were
20 there criminal background checks not included
21 in this package?

22 MS. SPIKES: I didn't get their

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1 file in time actually to get it over here so
2 I can get it to you. Ms. Jones has worked for
3 Newcomb for four years. Ms. Kim has worked
4 for Newcomb for two years.

5 MEMBER MOLDENHAUER: And what
6 location have they worked for?

7 MS. SPIKES: Queen Street. 1235
8 Queen Street, N.E.

9 MEMBER MOLDENHAUER: Chairman Loud
10 had just asked you a second ago if we had all
11 of the documentation for all the staff members
12 and you said we did in our file. Now that
13 you're saying we don't have two of them, I
14 think we would definitely want to see those
15 additional two.

16 Your current eight staff members,
17 or 10 if we include Jones and McCray, how do
18 they currently get to the site?

19 MS. SPIKES: By bus.

20 MEMBER MOLDENHAUER: All of them?

21 MS. SPIKES: All of them except
22 for two. Of the 10 or the eight? Are you

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1 asking the eight?

2 MEMBER MOLDENHAUER: Total eight.

3 I'm sorry, total 10.

4 MS. SPIKES: Of the 10 two drive
5 and eight -- let's see. Two walk and four
6 catch the bus.

7 MEMBER MOLDENHAUER: Okay. So
8 then we are still two short. If four take the
9 bus, two walk, two drive.

10 MS. SPIKES: Four, five, six,
11 seven, eight.

12 MEMBER MOLDENHAUER: It would be a
13 total of 10, though?

14 MS. SPIKES: Oh, the other two.
15 There's Ms. Jones and Ms. McCray. They both
16 take the bus.

17 MEMBER MOLDENHAUER: They take the
18 bus also. Okay. And that includes yourself?

19 MS. SPIKES: Yes.

20 MEMBER MOLDENHAUER: Okay. So
21 then you only have actually two cars that
22 would require parking on the street?

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1 MS. SPIKES: Yes.

2 MEMBER MOLDENHAUER: Okay. Going
3 back to the immunization form, I'm trying to
4 read it. I guess correct me if my
5 interpretation of this document is incorrect.
6 It says that zero are overdue, 14 were due,
7 and that's, I guess, then that listing below
8 the 14 children and their immunization details
9 so that was kind of an update from a past
10 report. With these 14 that are shown below,
11 that shows that 34 total in compliance?

12 MS. SPIKES: Yes.

13 MEMBER MOLDENHAUER: Okay. I just
14 wanted to make sure I understood that. Thank
15 you. I think those are all my questions for
16 now. Thank you.

17 CHAIRPERSON LOUD: Thank you, Mrs.
18 Moldenhauer. Are there any additional Board
19 questions? Okay. Then why don't we turn to
20 the Office of Planning.

21 MS. THOMAS: Good morning, Mr.
22 Chairman --

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1 CHAIRPERSON LOUD: Good morning.

2 MS. THOMAS: -- and Members of the
3 Board. Karen Thomas with the Office of
4 Planning. We recommend approval as requested
5 by Newcomb Day Care for staff of 13 and number
6 of students 39 as approved by OSSE so we
7 believe they met the test under their license
8 capacity for 39 students.

9 We also added variance relief for
10 parking which we believe was necessary for
11 this site. I would be happy to take any
12 questions that you may have on those.

13 CHAIRPERSON LOUD: Thank you.
14 Just a couple of very quick questions. In
15 your report you recommend several conditions,
16 I think six conditions. Have you heard
17 anything this morning that would change that
18 at all or are you still recommending these six
19 conditions?

20 MS. THOMAS: I'm still
21 recommending the six conditions, yes.

22 CHAIRPERSON LOUD: Okay. Very

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1 well. One of the requirements under -- let me
2 just back up. So based on the presentation
3 that the applicant has made, and presumably
4 the support that they receive from OSSE you
5 believe that they meet all the requirements of
6 Section 205, the office does?

7 MS. THOMAS: That's correct.

8 CHAIRPERSON LOUD: Okay. And
9 under 205.2 the criteria is that the center or
10 facility shall be capable of meeting all
11 applicable code and licensing requirements.
12 Does OP believe that they can meet that?

13 MS. THOMAS: Yes, I do, under
14 their license capacity.

15 CHAIRPERSON LOUD: Okay. Under
16 the 39.

17 MS. THOMAS: Yes.

18 CHAIRPERSON LOUD: And your
19 conclusion is based on what?

20 MS. THOMAS: OSSE's report that
21 was provided, the testimony that was provided
22 by the applicant in terms of correcting all

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1 the deficiencies.

2 CHAIRPERSON LOUD: Okay.

3 MS. THOMAS: As well as the past
4 OSSE report that they indeed have a license
5 capacity for 39.

6 CHAIRPERSON LOUD: Okay. The
7 testimony this morning is that they are short
8 five immunizations and that there are at least
9 two background criminal checks that Mrs.
10 Moldenhauer was able to draw out that are not
11 part of the record. Notwithstanding those
12 deficiencies is it still the conclusion of the
13 Office of Planning that they meet Section
14 205.2?

15 MS. THOMAS: That's correct.

16 CHAIRPERSON LOUD: Okay. In
17 Section 205.3 the criteria relates to traffic
18 conditions and the like and, of course, we now
19 have this issue of the variance for the
20 parking. Does the Office of Planning believe
21 that there are no adverse traffic impacts?

22 MS. THOMAS: Yes. Having visited

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1 that area several times at different times of
2 the day.

3 CHAIRPERSON LOUD: Okay. They've
4 been there since 1992. Right?

5 MS. THOMAS: Yes.

6 CHAIRPERSON LOUD: And we don't
7 have any witnesses here --

8 MS. THOMAS: To testify.

9 CHAIRPERSON LOUD: -- objecting
10 regarding adverse traffic impacts.

11 MS. THOMAS: That's correct, yes.
12 As I said, I did visit this facility at
13 different times of the day just to look at the
14 situation with respect to traffic and really
15 and truly it is lesser parking and I didn't
16 see anything to cause concern.

17 CHAIRPERSON LOUD: Okay. Under
18 205.6 it authorizes the Board to make special
19 treatment by way of design, screening and the
20 like. I think at one point, correct me if I'm
21 wrong, OP had recommended something other than
22 a chain link fence?

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1 MS. THOMAS: Yes. At one time,
2 yes.

3 CHAIRPERSON LOUD: Is that still
4 on the table?

5 MS. THOMAS: No.

6 CHAIRPERSON LOUD: Okay.

7 MS. THOMAS: It's just a sense of
8 aesthetics but not necessary.

9 CHAIRPERSON LOUD: Again, some of
10 the cases that we are able to rest on the
11 record. I think in other cases we really have
12 to make sure that we have a full record that
13 supports whatever decision we make. Under
14 Section 205.7 off-site play areas have to be
15 located such that there is no potential for
16 endangerment to the young people. Is that
17 Office of Planning --

18 MS. THOMAS: We were satisfied
19 that where they go to play was sufficiently
20 safe and access to that didn't present any
21 safety concerns to us.

22 CHAIRPERSON LOUD: Okay. Final

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1 question. Is there anything in the
2 presentation of the applicant, the testimony
3 that has come out this morning, the reports
4 that are part of the application that would
5 give OP pause to recommend approval of this
6 application? Anything.

7 MS. THOMAS: I wouldn't say give
8 me pause but I would just say where they were
9 deficient in presenting those two background
10 checks if they could submit it to the Office
11 of Zoning in a timely manner before the order
12 is released that would be helpful so at least
13 we could have a full record as far as those
14 go.

15 CHAIRPERSON LOUD: So the
16 background checks. Do you feel the same way
17 about the immunizations or is it just the
18 background checks?

19 MS. THOMAS: Just the background
20 checks.

21 CHAIRPERSON LOUD: Okay. I don't
22 have any additional questions. Let's see if

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1 other Board Members do.

2 MEMBER MOLDENHAUER: One of the
3 comments that was in the prior case from OSSE
4 was some of the condition aspects of the
5 property. In the applicant's recent
6 submission on Exhibit 30 they indicate that
7 they have taken lengths to repaint and to
8 improve the property.

9 I think also in the ANC's report
10 they say that they have done that. Can you
11 testify as to, I guess, the improvements or
12 maybe if there is any current areas that are
13 potentially subpar in regards to the interior
14 or the existing area?

15 MS. THOMAS: I really can't. I
16 have to be honest I did not go inside the
17 facility as to where they did make
18 improvements to the interior but I can only
19 see from the pictures that was presented. I
20 mean, I don't have any issues with it.

21 MEMBER MOLDENHAUER: Okay.

22 MS. THOMAS: Since they did any

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1 renovations I haven't been.

2 MEMBER MOLDENHAUER: You have not
3 been inside?

4 MS. THOMAS: Not inside.

5 MEMBER MOLDENHAUER: Okay. Thank
6 you.

7 MS. CUTHBERT: May I make a
8 comment, Ms. Moldenhauer? Originally when
9 they first came before the ANC I told you how
10 I felt. I'm a very particular person when it
11 comes to our children. They have really truly
12 cleaned up the whole building. I have to say
13 it's a 110 percent difference so I am pleased
14 when you walk into the day care.

15 MEMBER MOLDENHAUER: Thank you
16 very much. I was going to ask you that
17 question when you presented your testimony in
18 a few minutes but thank you for that
19 statement.

20 CHAIRPERSON LOUD: There are no
21 questions from the Board for the Office of
22 Planning. Did the applicant have any

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1 questions for the Office of Planning?

2 MR. SPIKES: No, sir.

3 CHAIRPERSON LOUD: Okay. Then we
4 can go right where you were heading,
5 Commissioner Cuthbert, and get to the ANC
6 report which we do have as our Exhibit 28.

7 MS. CUTHBERT: Good morning,
8 Chairman Loud, and BZA Board commissioners.
9 I'm Mary Cuthbert. I'm the Chair for Advisory
10 Neighbor Commission 8C and Single Member
11 District 8C-03.

12 I have to say about this facility,
13 in the first place, I constantly stayed on top
14 of them to make sure that they had every
15 document that you said was not in that first
16 case. That was one thing. I want them to
17 make sure everything is in there, all the
18 reports, the fire marshall would be there, the
19 superintendent's report, the fingerprints, all
20 that. I told them, "I'm not coming back down
21 if you don't have everything in order."

22 I went and visited the facility

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1 again to make sure it was still maintained, it
2 wasn't just something thinking that I'm going
3 to come by and you are going to have
4 everything in order. I did a surprise visit
5 and I'm really pleased.

6 I have to say that I told my
7 fellow commissioners they have made a real 110
8 percent improvement on the interior building
9 of appearance. Now, as far as the educational
10 part I'm not going to go into that. I get too
11 involved but as far as the appearance and how
12 the kids are being taken care of that I seen
13 it's a great improvement. Thank you.

14 CHAIRPERSON LOUD: Thank you,
15 Commissioner. Thank you for working in your
16 capacity as a chair of the ANC working with
17 the applicant to raise some of the -- I don't
18 want to say raise the standard but to help
19 them comply with some of what has been placed
20 on the record and thank the applicant for
21 working with the ANC as well.

22 MR. SPIKES: Mr. Chairman, she

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1 raised the standard. That's an accurate
2 statement.

3 CHAIRPERSON LOUD: I stand
4 corrected then. Do you have any questions for
5 the Commissioner? Okay.

6 Board Members? It doesn't appear
7 such. There is no one in the audience so no
8 one is here to testify and support our
9 position so then we turn back to the applicant
10 for closing remarks.

11 MR. SPIKES: Mr. Chairman, we
12 appreciate your tolerance in allowing us to
13 present our case. I think we have done the
14 best we could here in presenting the case and
15 what we needed to do to make this
16 presentation.

17 The only request that I have in
18 addition to the request that we be approved is
19 that we get a C of O that could be extended
20 into the distant future. It's not that we
21 don't like coming here to see you. We think
22 you're a wonderful group of people but we

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1 would like to see you as infrequently as we
2 possibly could. If I'm not too far in the
3 future, I humbly request a five-year C of O.

4 CHAIRPERSON LOUD: Thank you, Mr.
5 Spikes. I think we probably need to leave the
6 record open for a couple things and probably
7 would not be prepared to deliberate on the
8 case until we received or did not receive
9 those things.

10 Rather than suggest we deliberate
11 on this this morning, although I think the
12 application as a number of strong points in
13 it, I would like to suggest to colleagues that
14 we leave the record open for submission of the
15 documentation on the status of background
16 checks for, I believe, it was Ms. Kim and Ms.
17 Jones, as well as for the documentation for
18 the completed immunizations for the five
19 students that are not part of our record.
20 Presumably if that can be submitted to OZ in
21 the next couple of days, we could set this for
22 a decision next Tuesday.

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1 COMMISSIONER MAY: Mr. Chairman,
2 just a question. How are we going to address
3 the parking variance? I think for the sake of
4 consistency with other cases you raised the
5 point earlier that we may need to renotice
6 this.

7 CHAIRPERSON LOUD: Let me tell you
8 my thoughts on it and then let me tell you
9 that I also want to follow the law. Whatever
10 the law requires that we do is what I would
11 like to follow. Given the presence of the ANC
12 in this issue throughout, I mean, this is not
13 a surprise in that community because
14 Commissioner Cuthbert was a part of the
15 earlier case and part of this case.

16 Some of the testimony from
17 Commissioner Cuthbert regarding the lack of
18 adverse impacts to parking through the
19 variance I would be open to any legal
20 interpretation that would not require us to
21 renotice the case.

22 I would in that vein before

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1 supporting a condition that if we were to
2 approve it that everyone within 200 feet of
3 the applicant's property receive notification,
4 sort of post the fact that we granted that
5 variance relief from one parking space because
6 I think that all things being considered it
7 sounds like the community has been very
8 involved in this particular child development
9 project since at least 1992.

10 It's been there a long time. I
11 think we would have heard more about adverse
12 impacts if there were actually going to be
13 some. That is sort of just like a layman's
14 approach to problem solving. Again, I would
15 be for following the law and being consistent
16 so if there is no way to get around that, then
17 I would be for us doing what we have to do and
18 bite the bullet.

19 COMMISSIONER MAY: Mr. Chairman, I
20 just want to ask a question and maybe somebody
21 is more familiar with the past cases but if
22 this the first time that the relief for the

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1 parking requirement is being explicitly
2 discussed? Was it not addressed in the prior
3 ones at all?

4 MEMBER MOLDENHAUER: It was
5 addressed. It was noted in both the past case
6 by OP. I think the reality is that while
7 potentially lack of any past, I guess,
8 concerns of neighbors is important but then
9 there is also the issue of the fact that this
10 center has been in noncompliance for many,
11 many years.

12 I think that in regards to
13 following some of our past cases and what we
14 have done in past situations this is a higher
15 standard that is being requested that has not
16 been noticed. Chairman Loud and I have
17 discussed this. I think that while, yes, the
18 ANC has been involved in the issue and the
19 commissioner is here presenting her opinion,
20 I think this issue may not have been
21 specifically addressed.

22 I think there may be no additional

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1 issues but I think that the law requires us to
2 provide notice on it and provide neighbors an
3 opportunity to see the posting specifically
4 regarding parking and then address that.

5 COMMISSIONER MAY: Another
6 question I have what is the current status?
7 Is the order that's already in place going to
8 expire imminently or is that stayed while we
9 have an application in process? Maybe that's
10 a legal question.

11 MS. NAGELHOUT: The past order
12 expires -- they were approved in March of 2005
13 for three years so it's been expired for a
14 while. They did file an application last year
15 after the prior approval had already expired.

16 COMMISSIONER MAY: So it's already
17 beyond any approval and they are operating
18 without.

19 MR. SPIKES: No, no, no. We have
20 a temporary C of O.

21 MS. NAGELHOUT: But they don't
22 have a special exception. Parking was

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1 addressed in 1997. One of the conditions of
2 approval was that they would provide two on-
3 site parking spaces. I don't know that ever
4 happened. The 2005 approval required them to
5 provide one on-site parking space and I don't
6 know if that ever happened.

7 I think prior to that their staff
8 was small enough so that parking wasn't an
9 issue but as the number of kids has grown over
10 the years, the number of employees has grown.
11 At some point it became an issue.

12 COMMISSIONER MAY: Mr. Chairman,
13 all this points to the thought that we need to
14 be, I think, very explicit in granting the
15 relief to the variance request. I think
16 honestly it should be noticed once again.

17 I don't quite understand their
18 current legal status and the temporary C of O
19 and what that means without a special
20 exception in place but if they are already
21 operating without all the approvals that they
22 need, what difference does it make if we

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1 decide it next week versus next month. Let's
2 get the notice out there and then act with all
3 the information. That's my thought.

4 CHAIRPERSON LOUD: Board Member
5 Sorg, did you want to weigh in on this
6 discussion?

7 MEMBER SORG: Yes. I just wanted
8 to make an observation. I have not been here
9 on this Board that long but I can observe in
10 all of the CDC cases that I have sat on each
11 one has had some kind of discussion or issue
12 around parking and in general has required, I
13 think, the variances.

14 It seems to me that it would be
15 important to be inconsistent on this issue and
16 make sure that the people that are coming to
17 this Board with these kinds of requests know
18 that they are likely to run into the parking
19 issues and that they should address that
20 before they come here.

21 CHAIRPERSON LOUD: In my gut there
22 is something about it that it doesn't sit

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1 right because we are having a case just this
2 afternoon on this same issue where we made
3 them go out and we made them comply with the
4 notice requirements.

5 Part of me wants to figure out a
6 way to fix it and make it work but really that
7 is not the Board's responsibility. This is
8 something that we raised over and over again
9 in previous matters and it's something that OP
10 raised in the previous hearing that's in their
11 reports that there is a need to request
12 parking relief.

13 MS. SPIKES: Mr. Chair --

14 CHAIRPERSON LOUD: I think -- hold
15 on one second. I think one option would
16 probably be this is self-certified to grant
17 the relief. The applicant runs the risk of
18 still not getting the C of O because it does
19 not meet the parking requirement which I think
20 is what we would have to do if the applicant
21 does not amend this application.

22 On the other hand, the applicant

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1 appears to me to have amended the application.
2 I don't want to belabor this but it just
3 doesn't sit right to require one applicant to
4 follow the process and to allow a different
5 applicant to completely go around the process.

6 Yes.

7 MS. SPIKES: Mr. Chairman, it's
8 probably out of my ignorance not knowing. I'm
9 the one that did this report and I did not
10 give it to Mr. Spikes or Ms. Cannon before it
11 was submitted. When I was typing up and
12 trying to respond to these issues, I put in
13 the issue regarding the parking because it was
14 also in the report from Office of Planning.

15 CHAIRPERSON LOUD: You're talking
16 about the March 4th report?

17 MS. SPIKES: Yes, sir. The March
18 4th report. I just included that in there
19 just to let you know that most of the
20 employees do walk or catch the bus.

21 CHAIRPERSON LOUD: Again, if by
22 saying that you're saying that you are not

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1 requesting parking --

2 MS. SPIKES: I'm saying I didn't
3 do it as a request. I just was addressing the
4 issue because it was in the report that we got
5 from planning.

6 MR. SPIKES: But if I may, Mr.
7 Chairman.

8 CHAIRPERSON LOUD: Yes, Mr.
9 Spikes.

10 MR. SPIKES: I am of the opinion
11 honestly that the issue of parking as far as
12 the memo dated February 1, 2005, when the
13 District of Columbia Department of
14 Transportation that we had well established
15 that our intent to provide parking spaces in
16 the back yard could not be fully realized
17 because of the shape of the back yard and also
18 the condition of the alleyway.

19 Environmentally it would have been
20 unadvantageous for us to do that. I think the
21 Department of Transportation recognized that.
22 We tried to be as open as we possibly can to

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1 address that here and to not go under the
2 radar. I will say to you relative to the
3 parking is that the building is approximately
4 30 to 40 feet wide and with that being the
5 case there's provision for two cars there.

6 If we had community parking at
7 least we would have provisions for two cars.
8 If we walk down the street we would see a
9 building the back of which is facing Newcomb
10 Street in the front. The forefront is Malcolm
11 X Avenue and that particular area there is
12 always inevitably vacant for parking.

13 CHAIRPERSON LOUD: I don't want to
14 cut you off but you are making really great
15 arguments that go to the merits of the relief.
16 What Mr. May and the other Board Members are
17 talking about is the process, the procedure.

18 In order to earn that kind of
19 relief you have to provide notice to the
20 community that you are seeking that kind of
21 relief and that is the step that didn't happen
22 in your case.

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1 In order for us to proceed
2 forward, if you have amended your application
3 to include variance relief, which the Office
4 of Planning has recommended now, there are
5 several iterations of this case that you do,
6 if that is your relief that you're seeking,
7 we're going to have to notice the case for
8 variance relief which would mean, and I always
9 get the calculations a little off, there's
10 probably another --

11 How many days before this case
12 could come back?

13 MS. BAILEY: Mr. Chairman, it
14 depends. Are you asking for it to be put in
15 the D.C. Register or are you just asking for
16 notice to be sent to persons within a 1,200
17 foot radius?

18 CHAIRPERSON LOUD: I think to be
19 safe whatever we did in the Kimmell case, the
20 regular way we notice these cases is what we
21 should do in this case.

22 Mr. Moy, you were --

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1 MR. MOY: What we did in the
2 Kimmell case was we noticed the appropriate
3 amount which is 40 days.

4 CHAIRPERSON LOUD: Forty days. To
5 Ms. Bailey's question, was it just the 200
6 feet, or was it to the ANC and to all of the
7 list of --

8 MR. MOY: It was a full --

9 CHAIRPERSON LOUD: Full. Okay.
10 To answer your question, Ms. Bailey, it would
11 be the full notification requirements and I
12 think Mr. Moy's estimate is that it would be
13 about 40 days minimum.

14 MS. BAILEY: Yes, Mr. Chairman.

15 CHAIRPERSON LOUD: Okay.

16 MEMBER MOLDENHAUER: Mr. Chair, it
17 brings up a question and I don't know how we
18 want to deal with it. I have two different
19 views on this but right now they are operating
20 really legally with an expired C of O that
21 expired in December of '09. Their OSSE
22 license doesn't expire until March 22nd of

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1 this year so in about two weeks.

2 If we require the 40-day notice,
3 which I strongly think we have to based on
4 past cases as I've just said, I don't know how
5 they can continue to operate. I don't know
6 what OSSE's policy is, if they provide
7 temporary licenses for a period of time, if
8 they would stay the expiration until this case
9 is determined. I don't know the answer to
10 that but I throw that out as an issue of
11 concern that we probably need to think about
12 and discuss.

13 COMMISSIONER MAY: You mentioned a
14 temporary C of O. Can you explain what you
15 have?

16 MR. SPIKES: Yes. We have a C of
17 O that will expire, I think, in July. To Ms.
18 Moldenhauer's statement, I appreciate your
19 concern and appreciate very much you bringing
20 it to the attention of the expiration of the
21 license.

22 In that vein I would ask the Board

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1 would you be willing to recommend continuation
2 of the day care until such time you are able
3 to make a decision on the parking. We are
4 here today primarily dealing with the
5 substantive aspect of the day care center
6 relative to the best interest of the children
7 and also to the safety concerns.

8 Parking is tangential to that. We
9 attest to that fact to the extent that the day
10 care has been there for close to 14 years and
11 we have never had a person in the community to
12 complain about parking or lack of parking.

13 I think it would have a totally
14 adverse affect on the community without cause
15 to just continue the day care existence
16 because we have a parking problem. That would
17 be like saying that we have to close the
18 District building here because we don't have
19 parking and the subway system is closed.

20 CHAIRPERSON LOUD: Well, I have a
21 couple of thoughts in response to that. We
22 don't have a real problem. If your temporary

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1 C of O expires July 20, '10 and we're talking
2 about an additional 40 days notice, those 40
3 days would expire well before July 20, '10 and
4 we can set the case for decision the first
5 Tuesday after the expiration of the 40 days.

6 It would not be a situation of the
7 young people being forced out onto the streets
8 and so on and so forth. The expiration of the
9 OSSE license would not be an issue of zoning.
10 That would just be your issue with OSSE.
11 Obviously any enforcement issues would not be
12 an issue of zoning either.

13 That would be the ZA's issue. If
14 you've got a C of O that will take you to July
15 20, '10, unless I'm missing something, forty
16 days plus from now schedule it for decision.
17 You would have a decision one way or the other
18 before it expires in July of 2010.

19 MR. SPIKES: The only thing I
20 would require, Mr. Chairman, is any
21 guidelines, any requirements that you may have
22 for us to meet because I definitely want to be

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1 on the target bulls eye, no exceptions.

2 CHAIRPERSON LOUD: Just quickly
3 for me, I think working with the Office of
4 Planning they are extremely familiar with this
5 variance test and the criteria that has to be
6 met. I think they probably would be willing
7 to work with you on that and just make sure
8 that you have the evidence in the record to
9 meet each of the elements of the test. You
10 have spoken a little about it already with the
11 DDOT report and so on.

12 MS. THOMAS: I think what he needs
13 to understand is the process. I think he
14 needs to understand that he has to go through
15 the Office of Zoning and what, in effect,
16 amending the application really means. I
17 think that is where he is having a problem.

18 CHAIRPERSON LOUD: Okay.

19 COMMISSIONER MAY: We have talked
20 about having to do a new notice but until you
21 amend the application, they can't do the new
22 notice.

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1 CHAIRPERSON LOUD: I understand.

2 COMMISSIONER MAY: If you can get
3 that in today or tomorrow, then we can start
4 the 40-day clock.

5 CHAIRPERSON LOUD: He can amend on
6 the record, though. Right?

7 COMMISSIONER MAY: I don't know.

8 CHAIRPERSON LOUD: We've done that
9 before. I mean, you can just amend on the
10 record. You can go on the record right now
11 and say, "We hereby amend our application to
12 seek variance relief." Then what you are
13 going to have to do you are going to have to
14 supplement that with some filing where you
15 articulate the criteria for the variance test
16 and how it's met.

17 COMMISSIONER MAY: I think we need
18 to make sure the Office of Zoning staff is
19 paying attention when he does repeat it and
20 they are engaged in that conversation right
21 now.

22 CHAIRPERSON LOUD: Yes. Again,

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1 just to reiterate that, you can amend on the
2 record. We've had a number of cases where
3 there has been an amendment on the record and
4 you can just state on the record if you are
5 amending your application to incorporate a
6 request for variance relief for the parking.
7 The key thing would be the follow-up. I'll
8 defer to some of the OZ staff just in case
9 there are some other particular things that
10 are required to formally amend.

11 MS. BAILEY: No, Mr. Chairman.
12 The only thing the applicant has to do is to
13 say specifically that they request the
14 amendment to include the parking.

15 CHAIRPERSON LOUD: Okay.

16 MR. SPIKES: Thank you, Mr.
17 Chairman. I respectfully request the
18 amendment to the application to include
19 parking.

20 CHAIRPERSON LOUD: Very well. I
21 think in terms of the Office of Planning can
22 they work with your office in terms of the

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1 area variance test and the criteria that they
2 need to meet that?

3 MS. THOMAS: Yes, we would be
4 happy to help them. They can use our report
5 as an example of how they need to answer the
6 variance test and I would happily send you the
7 criteria for Section 3103 so you can answer
8 those questions.

9 MR. SPIKES: Thank you very much.

10 CHAIRPERSON LOUD: Thank you.

11 Is there further?

12 MEMBER MOLDENHAUER: I just wanted
13 to articulate the documents that we would need
14 not associated with the parking but in regards
15 to the actual CDC application. That would
16 need to be submitted so that we can make a
17 final decision on that portion of the case.

18 The Jones and McCray criminal
19 background checks and if Roury or
20 Haynesworth's background checks come back I'll
21 obviously include those. That would be
22 important, too. I think Chairman Loud had

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1 indicated that he would like the immunization
2 documentation for the additional two or four
3 children that are new.

4 I would like a copy of the current
5 -- we have a reference of it. We have the old
6 C of O but we don't have the new C of O that
7 is referenced that expires on July 31, 2010 so
8 those would be the documents that we would be
9 looking to get that we would leave the record
10 open for unless there is any additional
11 documentation that any other Board Members
12 have.

13 MR. SPIKES: Thank you.

14 CHAIRPERSON LOUD: I think the
15 fifth one that I would add to that, and I
16 think we talked about it, is just the briefing
17 on the pleading that briefs how you make the
18 area variance test.

19 MR. SPIKES: Yes, sir.

20 CHAIRPERSON LOUD: If we can move
21 along, are we able to come up with a date now
22 that is 40-plus days out?

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1 MS. BAILEY: Mr. Moy, are you
2 doing that?

3 MR. MOY: Excuse me. I would
4 suggest, Mr. Chairman, that given the time
5 frame we could shoot for either Tuesday, April
6 27, or May 5th depending on when the applicant
7 files with respect to the 40 to 45 days.

8 MR. SPIKES: We intend to do it
9 expeditiously.

10 MR. MOY: So today?

11 MR. SPIKES: Well, I would hope so
12 but other factors come into play.

13 MR. MOY: In that case, I think to
14 ensure enough time I'm looking at April the
15 27th.

16 CHAIRPERSON LOUD: April the 27th.
17 I think that is obviously fine with me. Mr.
18 May, if you're not back with us you can do an
19 absentee.

20 I think April 27th looks like it
21 will work. You've indicated that the four
22 things that Mrs. Moldenhauer mentioned you can

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1 have very expeditiously. That is the
2 background checks, the immunization follow-up,
3 the temporary C of O. Why don't we give you
4 a deadline of two weeks for that.

5 MR. SPIKES: Yes, sir. That would
6 be fine.

7 CHAIRPERSON LOUD: Two weeks from
8 today for that. Then for the pleading how
9 about a couple of weeks in front of the
10 hearing.

11 MR. SPIKES: That would be great.

12 CHAIRPERSON LOUD: Okay.

13 MR. MOY: Mr. Chairman, just one
14 other thing. I'm just recalling that I don't
15 believe we are going to have a hearing
16 scheduled for April 27th which would leave May
17 the 4th.

18 CHAIRPERSON LOUD: Okay. Let's
19 not probably have a special hearing just for
20 that. We'll take it now to May the 4th so two
21 weeks backed up from May 4th is the deadline
22 for your pleading on the area variance and

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1 still two weeks from today is the deadline for
2 the four categories of documents that Board
3 Member Moldenhauer mentioned.

4 MR. SPIKES: Thank you.

5 CHAIRPERSON LOUD: Okay. Is there
6 anything further, Board Members, on this case?
7 There doesn't appear to be. Anything further
8 from the Office of the Attorney General on it?
9 Okay. From OZ staff? Okay. Then I think we
10 can adjourn this case. Thank you. We look
11 forward to the follow-up in April.

12 Do we have anything further on
13 this morning's calendar, Ms. Bailey?

14 MS. BAILEY: No, Mr. Chairman.

15 CHAIRPERSON LOUD: Okay. Then
16 we're going to adjourn and perhaps we are
17 going to start the afternoon sessions. Is
18 1:15 okay for Board Members, a 45-minute lunch
19 break? Okay. We'll start at 1:15 with the
20 afternoon cases. We're adjourned.

21 (Whereupon, at 12:36 p.m. off the
22 record for lunch until 1:54 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:54 p.m.

CHAIRPERSON LOUD: This hearing
will please come to order. Good afternoon,
ladies and gentlemen. This is the March 9th
public hearing of the Board of Zoning
Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson,
and joining me today is Mr. Peter May from the
Zoning Commission; Mrs. Meridith Moldenhauer,
Ms. Nickie Sorg, Mayoral Appointees to the
BZA; Mr. Clifford Moy, Secretary of the BZA;
Ms. Mary Nagelhout, Attorney in the Office of
the Attorney General; and Ms. Beverley Bailey,
to my far left, Zoning Specialist here in the
Office of Zoning.

Copies of today's hearing agenda
are available to you and are located to my
left in the wall bin near the door. Please be
advised that this proceeding is being recorded
by a court reporter and is also webcast live.

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1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room.

4 When presenting information to the
5 Board, please turn on and speak into the
6 microphone first stating your name and home
7 address. When you are finished speaking,
8 please turn your microphone off so that your
9 microphone is no longer picking up sound or
10 background noise.

11 All persons planning to testify
12 either in favor or opposition to an
13 application are to fill out two witness cards.
14 These cards are located to my left on the
15 table near the door and on the witness tables.
16 Upon coming forward to speak to the Board,
17 please give both cards to the reporter sitting
18 to my right.

19 The order of procedure for special
20 exceptions and variances is statement and
21 witnesses of the applicant; government reports
22 including the Office of Planning, the

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1 Department of Public Works, etc.; the report
2 of the Advisory Neighborhood Commission;
3 parties or persons in support; parties or
4 persons in opposition; and, finally, closing
5 remarks by the applicant only.

6 Pursuant to Sections 3117.4 and
7 3117.5 the following time constraints will be
8 maintained. The applicant, the appellant,
9 persons and parties except an ANC in support,
10 including witnesses are allowed to up to 60
11 minutes collectively.

12 Appellees, persons, and parties
13 except an ANC in opposition including
14 witnesses are allowed up to 60 minutes
15 collectively. All individuals either opposing
16 or supporting the application are allowed
17 three minutes. Individuals representing
18 organizations are allowed up to five minutes.

19 These time constraints do not
20 include cross examination and/or questions
21 from the Board. Cross examination of
22 witnesses is also permitted by the applicant

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1 or parties only. The ANC within which the
2 property is located is automatically a party
3 in a special exception or a variance case.
4 Nothing prohibits the Board from placing
5 reasonable restrictions on cross examination.

6 The record will be closed at the
7 conclusion of each case except for any
8 material specifically requested by the Board.
9 The Board and the staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the parties must submit the
12 evidence to the Office of Zoning. After the
13 record is closed no other information will be
14 accepted by the Board.

15 The decision of the Board in these
16 contested cases must be based exclusively on
17 the public record. To avoid any appearance to
18 the contrary the Board request that persons
19 resent not engage the members of the Board in
20 conversation. Please turn off all beepers and
21 cell phones at this time so as not to disrupt
22 this proceedings.

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1 The Board in all likelihood is
2 going to conclude this afternoon's public
3 hearings well before 6:00 p.m. but if for some
4 reason we don't at 6:00 p.m. we will assess
5 whether we can complete the pending case or
6 cases remaining on the agenda and, if not,
7 reschedule them to the first available date on
8 the calendar.

9 At this time the Board will
10 consider any preliminary matters. Preliminary
11 matters are those that relate to whether a
12 case will or should be heard today such as a
13 request for postponement, continuance, or
14 withdrawal, or whether proper and adequate
15 notice of the hearing has been given.

16 If you are not prepared to go
17 forward with the case today or if you believe
18 that the Board should not proceed, now is the
19 time to raise such a matter.

20 Does the staff have any
21 preliminary matters?

22 MS. BAILEY: Mr. Chairman, Members

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1 of the Board, and to everyone good afternoon.
2 Mr. Chairman, one of the cases, Jardin'
3 Infantil, Application 17987 is on the docket
4 for this afternoon. We have not heard from
5 the applicant, as far as I know anyway,
6 concerning its postponement. It is scheduled
7 for today and we don't have adequate
8 information in the record for this case to be
9 heard at this time.

10 CHAIRPERSON LOUD: Thank you, Ms.
11 Bailey. I think what we should do is call up
12 those witnesses that are going to be
13 testifying this afternoon so we can get them
14 sworn in and then we can proceed on with the
15 calendar including the El Jardin' case.

16 MS. BAILEY: Thank you. All those
17 persons wishing to testify would you please
18 stand to take the oath. All persons wishing
19 to testify would you please raise your right
20 hand. Do you solemnly swear or affirm that
21 the testimony that you will be giving today
22 will be the truth, the whole truth, and

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1 nothing but the truth?

2 WITNESSES: I do.

3 MS. BAILEY: Mr. Chairman, it's my
4 understanding that you are going to take the
5 Infantil case up at this time so I should call
6 the case?

7 CHAIRPERSON LOUD: I think we are.
8 No, no. Is that El Jardin'?

9 MS. BAILEY: Yes, sir.

10 CHAIRPERSON LOUD: Sorry. Yes,
11 we're going to take that case up first.

12 MS. BAILEY: Application No. 17987
13 of El Jardin' Infantil, pursuant to 11 DCMR
14 Section 3104.1 for a special exception to
15 allow a child development center, 12 children
16 and two staff, under Section 205 at premises
17 2108 48th Street, N.W. It is zoned R-1-B and
18 the property is located in Square 1390, Lot
19 825.

20 Just briefly, Mr. Chairman, this
21 is the second time a hearing has been
22 scheduled on this case.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. If the parties are here for that
3 case, would they please step forward? Just
4 let the record reflect that there are no
5 parties present for that case.

6 I think from what I understand
7 there may have been a misunderstanding about
8 today's hearing date. Without passing
9 judgment on that one way or the other I think
10 there is an opportunity for us to postpone
11 this case and make it really clear to the
12 applicant what gaps there are in the record in
13 preparation for the new date which I think is
14 going to be May 4 at 9:30 a.m.

15 That will be the new hearing date.
16 I would like to turn to Board Member
17 Moldenhauer to really indicate for the
18 applicant what we are going to need in this
19 record to push forward on May 4th.

20 MEMBER MOLDENHAUER: Thank you,
21 Chairman Loud. Right now the Office of
22 Planning is unable to provide an analysis or

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1 their opinion on this case because they are
2 lacking a significant documentation. This is
3 the same as was the case back in November.

4 The applicant needs to make sure
5 that 14 days prior to the May 4th hearing that
6 they provide OP and our office with the
7 following information. One, whether or not
8 the applicant will continue to reside on site.

9 Two, comments on this proposal
10 from the OSSE office. An explanation of where
11 the 12 children will be dropped off and picked
12 up and how this process would be managed.
13 Information that would also provide a basis
14 for DDOT to provide comments.

15 And, fourth, that they provide
16 proposed number of center employees, how the
17 staff is anticipated to arrive to work,
18 whether they are coming via Metro, driving, or
19 walking, and the location of off-street
20 parking resources referenced in the
21 application. All this information is required
22 and will allow us to make a decision on the

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1 case.

2 CHAIRPERSON LOUD: Thank you,
3 Board Member Moldenhauer. So based on the
4 information that you have identified and our
5 saying that we are going to look at May 4 at
6 the continuation date, if we could flag two
7 weeks before May 4 as the deadline for
8 submission of that information from the
9 applicant.

10 MR. JACKSON: Mr. Chairman.

11 CHAIRPERSON LOUD: Yes.

12 MR. JACKSON: Arthur Jackson, D.C.
13 Office of Planning. Just one clarification.
14 In looking at the file there was a response
15 from the Office of the --

16 MEMBER MOLDENHAUER: OSSE?

17 MR. JACKSON: Yes -- that did
18 support 12 students on the site. That is an
19 update that we provided in our supplemental
20 report but we haven't heard anything else from
21 the applicant. My understanding is the
22 applicant has not gone back to the ANC to make

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1 a presentation there either.

2 MEMBER MOLDENHAUER: So then on or
3 before April 20, which would be two weeks
4 prior to May 4, the applicant needs to have
5 previously gone to the ANC, met with them,
6 represented their interest, and then provide
7 us with all except for -- there will be three
8 items that they will need to provide us with.
9 Whether or not they will reside on the
10 premises, the drop off and pickup of the
11 children, and the number of staff and their
12 access to and from work.

13 CHAIRPERSON LOUD: Thank you.
14 Thank you, Mr. Jackson.

15 Is there anything further in this
16 case?

17 MS. BAILEY: Not from me, Mr.
18 Chairman.

19 CHAIRPERSON LOUD: Okay. Then why
20 don't we move onto the next case and, as
21 indicated, calendar this for the 4th and look
22 forward to seeing the applicant at that time.

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1 MS. BAILEY: The next case is
2 Application 18044, Rock Creek Market, LLC,
3 pursuant to 11 DCMR Section 3103.2, for a
4 variance from the use provisions to allow the
5 sale of prepared food at an existing grocery
6 store under Subsection 330.5, at premises 644
7 through 646 Rock Creek Church Road, N.W.,
8 Square 3034, Lot 809. The property is zoned
9 R-4.

10 Excuse me. Did you file an
11 affidavit of posting on this property?
12 Affidavit of posting. Did you file one?

13 CHAIRPERSON LOUD: When responding
14 to Ms. Bailey if you wouldn't mind speaking
15 into the microphone. Just cut it on.

16 MS. SHEWANGEZAW: I'm sorry. What
17 is that?

18 MS. BAILEY: I'm sorry, Mr.
19 Chairman. I kind of blurted that out. We did
20 not receive an affidavit of posting for this
21 property so I'll turn it over to you.

22 CHAIRPERSON LOUD: Okay. Why

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1 don't we do this. Are there any other
2 preliminaries on this case and we can try to
3 address them all at the same time.

4 MS. BAILEY: Not from me, sir.

5 CHAIRPERSON LOUD: Okay. The
6 affidavit of posting is one of the
7 requirements that we have in our regulations
8 so that persons who live in your surrounding
9 community get notice of the request for relief
10 so typically you would have to post the
11 property to let individuals know.

12 Posting is putting a big sign on
13 the property to let them know of the requested
14 relief. Then you would have to come into the
15 Office of Zoning and submit an affidavit that
16 you have posted the property. What Ms. Bailey
17 is saying is that the affidavit is not part of
18 our record.

19 MS. SHEWANGEZAW: I wasn't aware
20 of doing that but I did collect 55 signatures
21 from the area residents letting them know that
22 I have this hearing today. Would that make a

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1 difference?

2 CHAIRPERSON LOUD: I think it does
3 make a difference. I think we've got also in
4 our record at our Exhibit 24 and I think
5 Exhibit 9 some neighbors that know about it
6 obviously and have gone on record supporting
7 it. Is that what you're talking about, the
8 Parkview United Neighborhood Coalition and
9 some of the individual neighbors that have
10 supported the project?

11 MS. SHEWANGEZAW: Yes.

12 CHAIRPERSON LOUD: Okay. In
13 addition to that we take some other steps to
14 make sure that the community finds out about
15 it. For example, through the Office of Zoning
16 send out an attestation letter that goes out
17 under the director's signature. Here in this
18 case it was Exhibit 23.

19 It goes to all persons that live
20 within 200 feet of the applicant's property.
21 We also publish it in, I believe, the D.C.
22 Register. I think based on the presentation

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1 and the package put together for us it's
2 pretty clear that the community knows about
3 it. I think there is good reason that we can
4 waive that requirement under Section 3100.5.

5 Do Board Members have any
6 additional thoughts on that?

7 COMMISSIONER MAY: Just for the
8 sake of consistency. In the past when a lack
9 of posting have come up I have generally been
10 opposed to proceeding without the posting
11 occurring on the principle that we have these
12 different methods of notifying the public
13 intended to reach different people
14 individually.

15 We mail to people who are in close
16 proximity. We notify the ANC so that they
17 know because they may not be within 200 feet.
18 Then we post the property so that the people
19 who are walking by who may well be affected by
20 this but don't live in the area and don't go
21 to ANC meetings are also aware of this change.

22 Given the particular circumstances

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1 of this case I'm not terribly troubled by the
2 prospect since it doesn't seem that there is
3 any significant resistance that has already
4 come as a result.

5 I also know that depending on how
6 we act today it may be a mute point. Given
7 those considerations, I guess I'm okay but
8 generally speaking I would like to see that
9 things are posted.

10 CHAIRPERSON LOUD: That's a word
11 to the wise. Did you understand Mr. May's
12 remarks? Okay. Very well. If there are no
13 other preliminary matters, we can probably
14 move straight into what we are here to
15 address.

16 I'll start us off. I understand
17 the requested relief as been identified as a
18 use variance. I think that's based on
19 information that may have been received from
20 the zoning administrator. As I understand it,
21 you currently operate a grocery store. You
22 have a C of O for grocery/prepackaged use and

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1 that's our Exhibit 10.

2 Apparently all you are seeking to
3 do is to add hot beverages -- I'm assuming
4 that's tea and coffee -- donuts, cold and hot
5 -- I hope I'm pronouncing this correctly --
6 panini sandwiches, and that's it. Is there
7 anything additional that is not in the record
8 that you would be planning to add?

9 Okay. Well, from my vantage
10 point, and I'll open it up to other Board
11 Members, we've had a case very similar to
12 yours very recently. It was the Jong case.
13 I don't have the case number readily
14 available.

15 I think Mr. May does and he can
16 mention it when he speaks but this case is
17 very, very similar to that case in that we
18 talked about the evolution of grocery stores
19 and with the evolution of the practice of
20 operating a grocery store there has also been
21 an evolution in the definition of what a
22 grocery store is.

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1 We no longer view, at least in
2 that case, where the principle use is a
3 grocery store having these incidental
4 offerings to the community of hot beverages,
5 danish, donuts. I think in that case it was
6 hot dogs and in your case it's hot and cold
7 panini sandwiches, as a separate use or as an
8 accessory use. It's just an incidental part
9 of really running a grocery store in the
10 modern era.

11 So for that reason in the previous
12 case we dismissed the case under the rationale
13 that relief was not required from us; that the
14 operator had as a matter of right the
15 privilege of adding those additional offerings
16 to their inventory.

17 I pretty much see this case lining
18 up the same way so I'm not certain that you
19 actually need relief. I think that is what
20 Mr. May alluded to when he said it might be
21 moot as to whether you posted an affidavit.

22 If I'm correct and you don't need

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1 relief, then by dismissal what we would be
2 saying to you and to the zoning administrator
3 is that you can add these very limited
4 specific things that you mentioned in your
5 application without fear that you are not in
6 compliance with the zone. Okay?

7 Let me see how other Board Members
8 feel and perhaps we can hear from the Office
9 of Planning and then we'll proceed as
10 appropriate.

11 MEMBER MOLDENHAUER: Chairman
12 Loud, I agree with your analysis. I think
13 that Jong does apply here. As we said in
14 another recent case, the definition is not
15 defined in the regs for a grocery store and,
16 thus, you know, we're taking that initial case
17 and following the logic there which states
18 that the industry is expanding and that while
19 these additional uses are then part of the
20 principle use so long as they are subordinate
21 to that primary traditional concept of a
22 grocery.

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1 COMMISSIONER MAY: Mr. Chairman, I
2 would mention for the Jong case the Case No.
3 of that was 17906. I will also just make a
4 couple of comments about the idea of accessory
5 use and whether the sale of prepared food
6 falls under the definition of a grocery.

7 In part because of its relevance
8 to this particular case but also because I
9 like to have a few things in the record for
10 the future because this is something that is
11 probably going to wind up becoming the subject
12 of future cases and may eventually affect how
13 the zoning regulations are rewritten.

14 This is a process that is going on
15 right now, which is simply to say that I have
16 some concern about the notion that the
17 definition of what might be a food or grocery
18 store, which is allowed in a C-1 zone. I know
19 this is not a C-1 zone but that's the first
20 zone in which this use is allowed, the idea
21 that that definition might be broadened to
22 include some other defined uses such as the

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1 sale of prepared food.

2 There is a little bit of a concern
3 that this might be a slippery slope in that in
4 the future a grocery store might buy custom --
5 wind up evolving into something that would
6 include some other use, whether it's allowed
7 in this zone or another zone, does actually
8 have a significantly different potential
9 impact and so, therefore, should be treated
10 separately.

11 In this case because both uses are
12 permitted in C-1, we technically can't define
13 the sale of prepared food as an accessory use
14 to the grocery use. It's almost as if the
15 definition of grocery doesn't have to change.
16 As a result simply because it's not an
17 accessory use and it's in the same class of
18 use, it's more or less okay without special
19 exception.

20 I think this is going to be an
21 issue that will have to be addressed when we
22 get the zoning regulations rewrite because

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1 many of these uses are no longer going to be
2 defined so specifically.

3 We are going from a very long list
4 of definitions of uses to a much shorter list
5 and then focusing on the potential impacts of
6 any given use and address the more specific
7 issues like is parking needed or is there
8 likely to be a need for dealing with trash
9 issues or things like that associated with a
10 specific use.

11 All that having been said, I am
12 comforted by the notion that this is not
13 really a use variance because I think it's a
14 hard sell. It's a use variance. If it were
15 to be treated as a special exception, I think
16 that would be okay but I think if a special
17 exception is not necessary, if that is the
18 consensus of the Board I think I would be
19 comfortable with that.

20 CHAIRPERSON LOUD: Thank you Mr.
21 May. Again, sort of words to the wise
22 regarding kind of what makes this very, very

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1 unique to the extent that others would try to
2 use this as a precedent in the future, the
3 idea that both uses are permitted in the C-1
4 so technically the prepared foods add-on use,
5 or whatever we want to call it, would not be
6 accessory.

7 As you said, it would tend to come
8 up again and the Zoning Commission is the
9 place that would tend to amend the current
10 text definitions and provide new ones so Mr.
11 May's thoughts on it take on added
12 significance.

13 Why don't we turn to the Office of
14 Planning just for a very brief sort of weigh-
15 in and I think we will be ready to make a
16 decision on it, if there be any. Good
17 afternoon.

18 MR. MORDFIN: Good afternoon. I'm
19 Stephen Mordfin with the Office of Planning.
20 In this case the Office of Planning did find
21 that this case was very similar to 17906
22 although applied for under different sections

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1 as directed by the Office of Zoning.

2 After reading through the
3 transcript from that previous case 17906 we
4 are in agreement that these two are very
5 similar. They are in awkward districts. They
6 want to add hot beverages and sandwiches, or
7 hot dogs I think was in the other case, to a
8 nonconforming grocery store in an R-4 District
9 in a building that was built as a retail
10 space. Taking direction then from the Board
11 in that previous case we would agree this
12 would be customarily accessory use.

13 However, if the Board did not see
14 that in this case, then we do see that, one,
15 if it were to be a special exception pursuant
16 to Section 2003, that this also meets all the
17 criteria from that section to make that case
18 similar to the other.

19 Or if the Board found this should
20 be a variance as directed by the Zoning
21 Administrator, then this case also meets all
22 of those criteria for the granting of the use

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1 variance in this case and would recommend
2 approval of the application.

3 CHAIRPERSON LOUD: Thank you. I
4 think that's pretty clear. It sounds like you
5 tend to agree with where we are coming out,
6 that this sort of stands on all fours with the
7 Jong case from, I guess, maybe April of last
8 year.

9 With that is there any further
10 discussion that we need to have on this case?
11 It doesn't sound like it. I would then move
12 that we dismiss the case. I don't know if we
13 need to move and vote on that. Okay, we do
14 need to move. So then I would move that we
15 dismiss this case with the understanding that
16 the proposed added inventory is a normal
17 customary part of the grocery business.

18 We're talking specifically about
19 the hot beverages, danish, donuts, and the
20 cold and hot panini sandwiches and leave to
21 another day the discussion about what else
22 might be on that slope or what might slip off

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1 of that slope. The application presented to
2 us is those narrow things.

3 Is there a second?

4 MEMBER MOLDENHAUER: I second.

5 CHAIRPERSON LOUD: Motion has been
6 made to dismiss and seconded. Is there
7 further discussion? Hearing none, all those
8 in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON LOUD: All those --
11 well, there is no opposition I don't think.
12 Are there any abstentions?

13 Ms. Bailey, I'm sorry. If you
14 could read back --

15 MS. BAILEY: Record the vote?

16 CHAIRPERSON LOUD: Yes.

17 MS. BAILEY: Mr. Chairman, the
18 vote is recorded as four zero one to dismiss
19 the application as stated by the Board. Mr.
20 Loud made the motion, Mrs. Moldenhauer
21 seconded, Ms. Sorg and Mr. May support the
22 motion.

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1 CHAIRPERSON LOUD: Thank you, Ms.
2 Bailey. I want to thank the applicant for
3 your package and also for what you're doing in
4 the community. We did see certainly --
5 speaking for myself saw the before and after
6 pictures of the corner grocery store, saw the
7 interior shots of the baskets holding the
8 fruit and the presentation looking so so
9 wonderful. Again, keep up the good work in
10 that community.

11 As you add inventory you may want
12 to consult with appropriate expertise
13 regarding making sure that you are in
14 compliance with the grocery store use. Okay?

15 MS. SHEWANGEZAW: Thank you.

16 CHAIRPERSON LOUD: All right. Is
17 there anything further in this case?

18 MS. BAILEY: Mrs. Nagelhout wants
19 me to mention that we are doing a dismissal
20 summary order, Mr. Chairman.

21 CHAIRPERSON LOUD: Thank you and
22 thank Mrs. Nagelhout for that. So we are

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1 doing a dismissal summary order which means
2 you'll have it in a couple of days.

3 MS. SHEWANGEZAW: Thank you.

4 CHAIRPERSON LOUD: Thank you.

5 I think we have one final case
6 this afternoon. When you are ready, Ms.
7 Bailey, we can call that.

8 MS. BAILEY: I'm ready, Mr.
9 Chairman. It's Application 17975 of Cleotilde
10 E. Galvez Kimmell and it's pursuant to 11 DCMR
11 Section 3104.1 for a special exception for a
12 child development center. That's 12 children
13 and 4 teachers under Section 205. The
14 property is located at 6524 8th Street, N.W.
15 It is zoned R-1-B. It's also located in
16 Square 2973 on Lot 81.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Bailey. The parties are at the table with
19 counsel and with the language interpreter.
20 Good afternoon. I think, and correct me if
21 I'm wrong, Board Members, I think this is
22 going to be a really truncated hearing because

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1 we heard this case before, pretty much all of
2 this case before, and we were very supportive
3 of granting the relief.

4 However, because of the need for a
5 parking variance we requested that you
6 renote the case. It's my understanding that
7 has been done so you are now back with the
8 variance request. You briefed us on how the
9 test is made. From my vantage point I guess
10 I would just be looking to hear a quick walk-
11 through of how the variance test is made and
12 then we can move to review the request for
13 relief.

14 Do Board Members see it any
15 differently? Okay. Then we'll ask OP to
16 weigh in as well on the variance but that's
17 where we are. Just in terms of framing your
18 presentation I think we're just looking to
19 have you walk through that. I think you've
20 got a supplemental report from the ANC.

21 MS. ZEGEYE: Yes. Thank you very
22 much. We just want to start the conversation

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1 by saying that in the previous application we
2 were talking about the use variance and we
3 amended that and we are asking for an area
4 variance which needs to satisfy a lesser
5 burden of practical difficulty. In talking
6 about the variance that is what we will be
7 discussing.

8 MS. SALA: Emily Sala.

9 MS. KIMMELL: Cleotilde Galvez
10 Kimmell.

11 MR. URIBE: Andrew Uribe,
12 interpreter.

13 COMMISSIONER MAY: Mr. Chairman,
14 before we get started, I just wanted to
15 mention the fact that I was not here for the
16 original hearing on this case but I have
17 reviewed the record and read the transcript so
18 I'm prepared to participate in full.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 May.

21 MEMBER SORG: Mr. Chairman, also I
22 should add the same thing, that I also was not

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1 here during the original hearing and have read
2 the record and should be able to participate
3 fully.

4 CHAIRPERSON LOUD: Thank you, Ms.
5 Sorg as well. Thank you both.

6 MS. ZEGEYE: The first test for a
7 practical difficulty for an area variance is
8 to show that there is some uniqueness or
9 special situation in regards to Ms. Kimmell's
10 property.

11 Actually, before proceeding we
12 also would like to state for the record that
13 after consideration of both what the Office of
14 Planning as stated in their application and
15 looking at Ms. Kimmell's property we have a
16 different opinion as to whether or not a
17 parking space can be constructed on her
18 property. We actually don't think that is
19 possible

20 MS. SALA: Going back to the first
21 factor to look at being uniqueness, Ms.
22 Kimmell's property is on a corner of 8th and

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1 Van Buren, N.W. The entrance to her home, her
2 front door, is on 8th Street. She also has a
3 driveway going into her garage parallel.
4 Coming off of 8th Street there is a public
5 alley that abuts part of her yard.

6 MS. ZEGEYE: We know it's kind of
7 hard to visualize all that so we tried to draw
8 approximately what we're talking about so if
9 the Board is willing to look at that drawing,
10 we are willing to provide it to the Board.

11 CHAIRPERSON LOUD: Are you saying
12 you brought a drawing? You only have one copy
13 of it?

14 MS. ZEGEYE: Yes, we do, but I
15 think we have looked at it enough.

16 CHAIRPERSON LOUD: I guess it
17 would be helpful. It will be hard for each of
18 us to look at it as you're talking so perhaps
19 what we can do --

20 MR. MOY: If you would like, Mr.
21 Chairman, staff can make copies of that.

22 CHAIRPERSON LOUD: Okay. If you

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1 would like, perhaps give it to Ms. Bailey or
2 Mr. Moy. They will make copies. Are you able
3 to walk through some of your presentation
4 without that or do we need to take a bit of a
5 break?

6 MS. ZEGEYE: Yes.

7 CHAIRPERSON LOUD: Okay.

8 MS. ZEGEYE: In addition being
9 that it's a corner lot there is a building
10 restriction line both on part of the property
11 15 feet coming in off of Van Buren and 15 feet
12 coming off of 8th Street. It is unique for
13 the building restriction line to be on both
14 ends of that corner property.

15 MS. SALA: Also her house is
16 pretty massive in comparison to the rest of
17 the houses in the neighborhood and occupies
18 about what we think is 67 percent of the
19 property which leaves her with very little
20 space to work with when we take into
21 consideration also the existence of this
22 building restriction line.

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1 MS. ZEGEYE: In addition to that
2 Ms. Kimmell has also three trees on her
3 property, one on the Van Buren side and two on
4 the yard abutting the alley. Any construction
5 would require to remove those trees which is
6 also an added uniqueness to her property just
7 because the other properties around the
8 neighborhood do not have that many trees or
9 trees that are that old or demonstrate that
10 kind of characteristics.

11 MS. SALA: It's important to note
12 those trees are close to the -- right up next
13 to the electrical poles, power lines, thereby
14 complicating their placement.

15 MS. ZEGEYE: As Emily said, it is
16 a fact that the driveway is a sloping driveway
17 indicating there is some unevenness on the
18 property that need to be taken into account
19 and researched before any kind of construction
20 on the yard will take place.

21 MS. SALA: The yard abutting the
22 alley is also surrounded by a fence and this

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1 has to be removed if there is any
2 construction.

3 MS. ZEGEYE: Although it's not
4 related to the actual property the fact that
5 the teachers that Ms. Kimmell will employ
6 reside with her we think present a unique
7 situation in this case. There is no problem
8 of access to the development center because
9 they all live there so they don't require any
10 kind of additional parking that may be the
11 case in development centers where people don't
12 live there and teach there.

13 MS. SALA: We believe that the
14 Office of Planning's report suggesting that
15 there could be a parking space constructed on
16 one of the yards was referring to the yard
17 abutting the alley and it would be practically
18 difficult and cost-wise practically impossible
19 to accomplish this.

20 MS. ZEGEYE: So just to, I guess,
21 walk through that discussion on page 4 of the
22 application that we have submitted, we tried

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1 to really look at the measurements of her yard
2 and see really what would be needed in terms
3 of measurement if she was to construct this
4 parking space and taking into account again
5 the building restriction line, the space that
6 she has available for her is about, again,
7 approximately 500 square feet.

8 If we go with the premise that at
9 the minimum you need a 9 by 19 for a parking
10 space as per the regulation she would need to
11 provide about 171 square feet just for that
12 parking space without talking about the access
13 and all the other construction and spaces that
14 she has to make available to make that parking
15 space useable.

16 As you can see in that paragraph
17 we think that she would need 456 square feet
18 to do this parking space and she only have
19 500. If the parking space is constructed
20 perpendicularly to the public alley, it would
21 just go straight basically up to her house.
22 If it is constructed parallel to the public

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1 alley, it would just basically kissing the
2 fence that is separating her house from that
3 of the neighbor.

4 In both cases it's really
5 difficult to construct that. That is without
6 even adding the reduction in property value to
7 have such an awkwardly positioned parking
8 space when there is a driveway to another
9 parking space that is completely separate from
10 this one.

11 MS. SALA: So in summary partially
12 I want to emphasize again there would be
13 safety issues if there was any construction in
14 that area and it would go over the building
15 restriction line.

16 In addition, as we noted, the
17 trees would have to be removed. We want to
18 note that it is the BZ Office of Planning
19 policy in its comprehensive plan to preserve
20 residential yards and to discourage putting in
21 permeable surfaces over those yards.

22 This would be going up against

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1 that policy and it's definitely not something
2 that people should be asked to do, to remove
3 trees from their yard not only because it's
4 costly but because those trees are right by
5 the power lines, right by the alley, right by
6 the other neighbors houses. That can be
7 dangerous, too, but because you should have a
8 sense of some kind of yard, a green space that
9 is your own. That is part of the D.C. policy.

10 MS. ZEGEYE: Especially given Ms.
11 Kimmell's case again who does not employ
12 anybody from outside the house a strict
13 compliance with the zoning regulations creates
14 serious practical difficulty and would be
15 economically prohibited to her to construct an
16 additional parking space.

17 In addition to the cost of
18 removing that we looked at the permit fees and
19 the construction cost looking at the market
20 rate, the going market rate for the D.C. area.
21 We came up with a large sum of money that she
22 would have to invest in order to satisfy this

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1 requirement and that is going to be cost
2 prohibitive and practically difficult for her.

3 MS. SALA: So the fees. There is
4 kind of a long list of fees, construction
5 cost, lawyer cost. Again, that would include
6 the cost of removing trees which can probably
7 start around \$500 for each of those two trees,
8 probably more due to their location near other
9 houses, near power lines and near a public
10 alley, as well as the fact they are pretty
11 tall. In addition there is the time and
12 inconvenience cost this could present to her
13 neighbors and should be considered.

14 MS. ZEGEYE: Aside from looking at
15 her actual property we also based on previous
16 transcript from the Board we looked at
17 mitigating circumstances, things that she
18 could do to ensure that the granting of this
19 variance would not create any kind of problem.

20 We contacted several businesses in
21 the neighborhood as well as community members.
22 At the time of the submission of the amended

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1 application we hadn't received any response
2 from these entities that we had contacted.

3 However, in the last week we
4 received three positive responses, namely from
5 one church and two neighbors who are willing
6 to provide Ms. Kimmell a parking space for her
7 day care if needed. The support from the
8 church is from the Baptist Church on 401 Van
9 Buren, I think, next to the Takoma Recreation
10 Center and they wrote a letter, which we have.

11 Again, I don't know whether we'll
12 be able to submit that to the Board but they
13 basically said that they would be willing to
14 offer her the parking space that they use.
15 Again, that parking space is on-street parking
16 space but we think that at the least it serves
17 to show that the community is definitely
18 behind Ms. Kimmell and supports her fully in
19 her endeavor.

20 MS. SALA: Ms. Kimmell also spoke
21 from and has a signed letter as well as
22 pictures of two very, very close-by neighbor's

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1 homes. They have offered her space in their
2 driveway. They have two two-car garages and
3 they have only one car and they want to
4 support by offering her their off-street
5 parking. We have letters and pictures of
6 those as well to submit if we are allowed to
7 do that.

8 CHAIRPERSON LOUD: Do you have
9 those with you?

10 MS. SALA: Um-hum.

11 CHAIRPERSON LOUD: I guess you can
12 submit it but it's my understanding to locate
13 a required space off site would take a
14 different kind of relief. It would take
15 special exception relief. Are you asking for
16 that now or are you asking for the variance
17 from the requirement in the first place?

18 MS. ZEGEYE: We are asking for the
19 variance from the requirement. We're talking
20 about these three letters just to show that
21 there are mitigating circumstances. In the
22 event that there is a car that needs to be

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1 parked in relation to Ms. Kimmell's child
2 development center there are at least three
3 areas that are readily available for that to
4 happen. It's just in addition to the variance
5 argument.

6 CHAIRPERSON LOUD: Why don't you
7 go ahead and submit it and we can ourselves,
8 I guess, try to sort out what we might do.

9 MS. ZEGEYE: Okay. Just to
10 continue, in addition to that Ms. Kimmell's
11 property is located very close to Metro
12 stations and public buses. She's 10 minutes
13 from Takoma Metro Station so teachers if
14 needed can park there and just walk 10 minutes
15 to the child development center or they can
16 just take the many, many buses that drive and
17 stop right on Georgia Avenue very close by to
18 her house.

19 The fact that she's so well-
20 endowed in terms of like public transportation
21 access will mitigate the need to provide a
22 parking space, off-street parking space for

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1 her teachers. And there are also parking
2 garages that are available that people can
3 park there.

4 We talked to Ms. Kimmell and she
5 is even willing to consider to make it a
6 requirement of employment. Again, as it
7 currently stands all the four teachers that
8 she is employing live with her. They are her
9 family members.

10 In the event that she needs to
11 hire somebody from outside, she can make it a
12 requirement to use some type of public
13 transportation. The need for the off-street
14 parking requirement does not arise.

15 MS. SALA: Again, we would like to
16 note as part of the variance requested this is
17 in line with the zone plan. We believe it is
18 also in the public interest of her family and
19 her neighbors. It's a request that makes
20 sense for the situation.

21 We are in agreement with the
22 Office of Planning report that this should be

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1 reevaluated in five years and that would be
2 another opportunity to address these same
3 issues if there is any issue continuing into
4 the future.

5 MS. ZEGEYE: And just, I guess, a
6 final point is that we were able to get the
7 minutes from the ANC and we hope that in
8 addition to the letter that was submitted
9 previously these minutes can give the
10 necessary information in terms of quorum to
11 allow the Board to consider the ANC letter and
12 give it the great weight that it usually gets.
13 Thank you.

14 MS. SALA: Thank you.

15 CHAIRPERSON LOUD: Thank you. We
16 appreciate that presentation. Let me see if
17 Board Members have any questions in follow-up
18 to the presentation.

19 COMMISSIONER MAY: Looking at the
20 plan that you just provided, which I have now
21 buried somewhere in here. I just wanted to
22 double check something. There is a dimension

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1 in here that seems to indicate that the
2 distance from the back wall of the house to
3 the fence at the alley is 20 feet. Is that
4 correct? Looking at this photograph it kind
5 of looks like it's a little bit more than
6 that.

7 MS. ZEGEYE: From the back --

8 COMMISSIONER MAY: Of the house.

9 MS. ZEGEYE: -- of the house. Oh,
10 that would be the front, right? On the map is
11 that the front that you're looking at?

12 MS. SALA: The yard along the
13 alley.

14 COMMISSIONER MAY: The yard along
15 the alley.

16 MS. ZEGEYE: It's about 15 to 20
17 feet.

18 COMMISSIONER MAY: From the back
19 of the house to the alley?

20 MS. ZEGEYE: Let me make sure.
21 Are you talking about this one?

22 COMMISSIONER MAY: No.

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1 MS. ZEGEYE: You're talking about
2 this right here?

3 COMMISSIONER MAY: The distance
4 from the house itself. There you go, from
5 that line to that line.

6 MS. ZEGEYE: Yes. It's about 20.

7 COMMISSIONER MAY: Twenty feet.
8 Okay. Photos can be sort of deceptive because
9 this looks like it's a little bit longer than
10 that. Can you tell me if there is a
11 difference in the elevation, the height of the
12 yard versus the alley? Is the yard higher
13 than the alley or is it at the same level?

14 MS. SALA: I believe it's a little
15 bit higher.

16 COMMISSIONER MAY: Any idea how
17 much higher?

18 MS. ZEGEYE: About two feet maybe.
19 There is some elevation. Again, you can also
20 look at the plat that was given by the
21 surveyor in terms of like the calculation, the
22 plat from the surveyor and the 20 feet that

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1 we've added there I think should correspond.

2 COMMISSIONER MAY: The plat from
3 the surveyor really only shows the dimensions
4 of the property itself and then the building
5 restriction line. It doesn't show anything
6 about elevations or heights of things.

7 MS. ZEGEYE: It doesn't show
8 anything about the elevation.

9 COMMISSIONER MAY: It doesn't show
10 anything about the distance to the house.

11 MS. SALA: I could submit one
12 photo that will show you at least the yard
13 itself is elevated significantly above the
14 sidewalk.

15 COMMISSIONER MAY: Okay. That
16 would be very helpful because, frankly, I'm
17 not convinced on the difficulty of creating a
18 parking space here because it's relatively
19 speaking flat and square and there is rear
20 yard space to work with. The next question I
21 have is the rear yard has some play equipment
22 in it.

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1 MS. ZEGEYE: Could you repeat
2 that, sir?

3 COMMISSIONER MAY: The rear yard
4 has some play equipment in it.

5 MS. ZEGEYE: Yes.

6 COMMISSIONER MAY: But I see
7 looking at the Office of Planning's report
8 that the outdoor play area would be the Takoma
9 Rec Center, not the rear yard, that it would
10 not be on site, that it would only be down at
11 the rec center.

12 MS. ZEGEYE: Yes, she currently
13 uses the rec center.

14 COMMISSIONER MAY: So the rear
15 yard is not used at all for recreation,
16 outdoor play?

17 MS. SALA: It's not. Ms. Kimmell
18 also has two grandchildren and some of those
19 toys are family toys, that kind of thing.
20 It's not used for her day care service.

21 COMMISSIONER MAY: Right.

22 MS. ZEGEYE: I just want to repeat

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1 again that this is a home business and it's
2 not just a center. It's also a place where
3 she resides.

4 COMMISSIONER MAY: I understand
5 that. I'm just checking to get clarification
6 about this. If it were actually used and was
7 part of the recreation area, you could make
8 the argument, I think, that the parking space
9 would eat up too much of the rear yard and so
10 you could have the outdoor play area but if
11 you're not arguing that you need that outdoor
12 play area, then you can't use that argument.
13 I'm trying to find areas to help make the case
14 because what I've heard so far hasn't really
15 made the case for me.

16 Looking at this photograph it
17 looks like it's a foot to a foot-and-a-half of
18 greater elevation on the backyard. Now --

19 MS. ZEGEYE: Are there any
20 specific questions that you have in terms of
21 the argument that we made? There is only 500
22 square feet left for her to work with if you

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1 take into consideration the building
2 restriction line.

3 COMMISSIONER MAY: Right. Well,
4 that is a good question. The building
5 restriction line restricts you from having a
6 building but it doesn't necessarily restrict
7 you from having a parking space.

8 MS. ZEGEYE: That is actually up
9 for discussion because we looked at the regs
10 and there is no limitation as to what a
11 building restriction line means. I could
12 easily mean both building restriction and just
13 construction generally speaking.

14 MS. SALA: Looking at past cases
15 from the BZA in terms of the transcripts I
16 found several transcripts but I didn't find
17 anything that conflicted with the idea that
18 the building restriction line provided a line
19 past which construction couldn't take place
20 and that included parking on those transcripts
21 that I cited.

22 COMMISSIONER MAY: I don't claim

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1 to have done any case research on this but
2 just reading the zoning regulations with
3 regard to a building line, and this is in
4 Chapter 1, it refers -- I won't read the whole
5 thing but the definition is for building line.
6 It's actually "line, building."

7 It says, "It also applies to
8 building restriction lines but it is a line
9 beyond which property owners have no legal or
10 vested right to extend a building or any part
11 of a building without special permission and
12 approval of proper authorities."

13 Building and part of the building
14 is the only thing that is restricted there.
15 It doesn't say anything about a parking space.
16 In fact, you can put fences and things like
17 that very obviously because you have a fence
18 there.

19 MS. ZEGEYE: Yes, that's true.

20 COMMISSIONER MAY: I don't think
21 there is a restriction that says you can't
22 have a parking space in that area. I'm not

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1 advocating that we are going to require
2 putting a parking space in what is effectively
3 the front lawn or the side lawn of this house.
4 In that rear area I think you have more space
5 to work with.

6 I would also question the argument
7 that you actually need something like 450
8 square feet for that. A 9 by 19 space can be
9 directly abutting the alley and so there it
10 only requires 171 square feet according to
11 your calculation.

12 MS. ZEGEYE: Yes. It would
13 require also the removal of the two trees
14 because --

15 COMMISSIONER MAY: I understand
16 that. I wasn't talking about the trees. I
17 was just talking about the argument about 456
18 square feet.

19 MS. ZEGEYE: We would like to
20 actually refer you to page 3 of the amended
21 application that we submitted in the footnote.
22 I think it's footnote 4 where we list all the

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1 precedent that the Board of Zoning actually
2 looked at building restriction in relation to
3 parking spaces and that they've talked about
4 it in a way that would led someone to infer
5 that building restriction lines are also
6 looked at just construction, not just lines of
7 the building.

8 COMMISSIONER MAY: It would be
9 different if we were talking about the right-
10 of-way because you couldn't put a parking
11 space into what would be right-of-way space
12 but if you're talking about a building
13 restriction line, I'm fairly certain that you
14 can put a parking space there.

15 Again, just back to the basic
16 square footage requirement, there isn't really
17 -- I mean, you don't 450 square feet. You
18 only need a little under 200 square feet. You
19 would have to take out a tree but I don't know
20 that we're going to treat a tree in a
21 protection area here or anything else like
22 that that would apply where zoning would

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1 actually apply. It may contribute to the
2 unique circumstance.

3 I would allow that that either
4 there are not a lot of trees around or this is
5 a very significant feature of the property or
6 something like that. That might get somewhere
7 but I'm not sold on that yet. Anyway, k those
8 were the specific questions that I had.

9 MS. ZEGEYE: In terms of the
10 measurement of the parking we looked at what
11 was required for commercial parking and that
12 is how we inferred to get to the 456. Again,
13 the way we are looking at it is, okay, the
14 parking space is 171 square feet but you
15 probably need to make some space around it for
16 people to enter in and then park the car.

17 You just can't come right from the
18 alley and back out. We thought that just
19 doing it like that would actually raise some
20 safety issues for people going up and down the
21 alley.

22 COMMISSIONER MAY: It's a little

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1 tight with a 15-foot alley to make a 90-degree
2 turn into a parking space but it's not
3 impossible and it would mean widening it maybe
4 a little bit. You'd have to go to 10 or 11
5 feet instead of nine feet in order to make
6 that turn. It wouldn't require 450 feet.

7 MS. ZEGEYE: Okay.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 May. Additional questions?

10 MEMBER MOLDENHAUER: I just think
11 Mr. May's question was very pointed about the
12 potential applicant using the rear yard ever
13 for the children and I wasn't sure if maybe
14 you wanted to ask the applicant that question
15 or if you guys have already had that
16 discussion with the applicant.

17 MS. ZEGEYE: Well, like Emily
18 said, the applicant used that yard for her
19 grandchildren.

20 MEMBER MOLDENHAUER: Do we know if
21 she has ever used it for her students? Do the
22 children ever go outside and just enjoy a

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1 breath of fresh air during the day?

2 MS. SALA: The monitors of the
3 Office of the State Superintendent of
4 Education have indicated to Ms. Kimmell that
5 if she were to use it for her business it
6 would have to go through some additional
7 modifications to make it a safer play area.
8 She would have to do something.

9 MEMBER MOLDENHAUER: So you're
10 saying that OSSE does not permit her to use
11 that in conjunction with her business?

12 MS. SALA: As it currently stands.

13 MEMBER MOLDENHAUER: As it
14 currently exist.

15 MS. SALA: However, again, this
16 case is going to come back. The Office of
17 Planning has suggested a five-year review and,
18 you know, perhaps after that she may want to
19 utilize that.

20 MEMBER MOLDENHAUER: These cases a
21 lot of them have conditions time-wise but
22 we're trying to figure out in regards to this

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1 current case and the ability to place parking
2 in the rear of the property which I think Mr.
3 May has gone through in detail that it
4 potentially is possible and I was just trying
5 to get some more additional detail on that one
6 issue.

7 The back porch, do you know how
8 large that is? You have it in your diagram
9 and I'm assuming that your diagram is probably
10 not just scale in aspects.

11 MS. ZEGEYE: We have other picture
12 to show because I think it's better than just
13 trying to give you an approximate measurement
14 of that. It comes up --

15 MS. SALA: With the pictures we
16 submitted with the amended statement you may
17 see it. Again, it's a question of the angle
18 of the picture but there is another picture to
19 submit.

20 Addressing the issue of whether
21 this could ever be used as a play area, Ms.
22 Kimmell has told us she is not opposed to that

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1 at all. She's interested in it. It's just
2 something that would be a cost that she hasn't
3 put forward yet and, frankly, she wanted to
4 present a strong application for her special
5 exception as well.

6 She wanted to have every point on
7 her side and if her neighbors were even
8 potentially going to argue that this could
9 create noise, she wasn't going to step forward
10 with it but it's her yard. I think she should
11 have it and she has expressed interest in
12 using it in the future. It's not something
13 that she should be deprived of.

14 MEMBER MOLDENHAUER: Okay. You're
15 making an argument to incur the cost of trying
16 to renovate this to put parking in the rear
17 would then potentially be a detriment because
18 in the future she may want to actually improve
19 it so that she could use it in conjunction
20 with her child development center?

21 MS. ZEGEYE: Yes.

22 MEMBER MOLDENHAUER: Thank you.

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1 COMMISSIONER MAY: Mr. Chairman,
2 if I could insert one thing. I have
3 effectively been corrected by the Office of
4 the Attorney General that the required parking
5 space can't be located between the building
6 line and the lot line so it can't go in that
7 space that is on the side of the property but
8 it can still go in the rear yard and that
9 would require taking the tree.

10 However, I still haven't quite
11 cleared that hurdle. I mean, you made the
12 argument that Ms. Kimmell should not be
13 deprived of her yard but she's trying to do
14 something that carries certain requirements
15 with it, one of those being a parking space.
16 If you want to have the day care center, you
17 might need to put the parking space in.

18 MS. ZEGEYE: And we also would
19 like to, I guess, add that one of the
20 arguments that we had and that Ms. Kimmell in
21 trying to prove an area variance is needed to
22 show practical difficulty and having to remove

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1 trees and do all this. It may seem not to be
2 a lot but for her it's a lot of construction
3 and cost is a practical difficulty for her.
4 Given her economic situation that is cost
5 prohibitive.

6 CHAIRPERSON LOUD: Are there any
7 further Board questions? Did counsel have
8 anything further?

9 MS. ZEGEYE: No.

10 CHAIRPERSON LOUD: Okay. Just a
11 couple of quick questions on these offers to
12 provide parking from neighbors. Are these
13 adjacent neighbors, 6528 and 6512 8th Street?

14 MS. SALA: I think the applicant
15 can speak to that, the closeness of the home,
16 the two neighbors.

17 CHAIRPERSON LOUD: Just tell me
18 your address again and I can figure it out.

19 MS. ZEGEYE: They are like a
20 couple of blocks I think -- I mean, a couple
21 of houses.

22 COMMISSIONER MAY: If 6524 is the

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1 address of the applicant and we have 6520,
2 which would be the same side of the street,
3 and it may be next door.

4 MS. KIMMELL: The one neighbor is
5 the house next to my house and the other one
6 is three houses after my house.

7 CHAIRPERSON LOUD: Okay. Thank
8 you.

9 MS. KIMMELL: Thank you.

10 CHAIRPERSON LOUD: Now let's turn
11 to the Office of Planning for your report.

12 MR. MORDFIN: Good afternoon. I'm
13 Stephen Mordfin with the Office of Planning.
14 We reviewed the criteria for the granting of
15 the special exception. I don't remember if we
16 did this at the last hearing.

17 CHAIRPERSON LOUD: You know, I
18 thought we did. If you want to go through it,
19 you can.

20 MR. MORDFIN: I thought we did,
21 too. What I would like to do, though, because
22 I thought that this was done before, is just

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1 go over the additional information that was
2 presented regarding the parking.

3 First I would like to clarify that
4 with the pervious surface the zoning
5 regulations under 2117.10 dos allow for
6 pervious, not impervious on private property.
7 If the applicant were required to put in a
8 parking space, it could be pervious within the
9 rear yard.

10 Now, I do see that we have the
11 drawing that was submitted by the applicant
12 but because everything is approximate and not
13 done to scale, it's kind of difficult to
14 determine whether or not you could actually
15 put a parking space in there.

16 We don't know the exact locations
17 of the trees. I suspect that there probably
18 is 19 feet there from other drawings that were
19 submitted between the rear of the alley and
20 the rear of the house.

21 Also, with regard to the 450
22 square feet that you would need for parking,

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1 I think that mostly relates to when you are
2 constructing a parking lot as opposed to
3 putting in a driveway.

4 This would be a driveway space
5 that you could park a car in so I think the
6 171 square feet would be all that would be
7 necessary if the applicant were required to
8 put in a parking space to just pave that much
9 and it could be done with pervious paving to
10 reduce the impact on the rear yard and reduce
11 the impact on those trees in the rear yard so
12 that you are not paving over the dripline of
13 those trees.

14 I think there is a unique
15 situation there. I think it's still within
16 the application that all of the applicants for
17 the child development center would also be the
18 residents and the employees would both be
19 living in the house. They would be living in
20 the house and working in the house so you
21 wouldn't have the impact of them driving to
22 the site.

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1 The applicant has submitted some
2 neighbors who are willing. They are across
3 the alley. I think that it would probably
4 meet the test for a special exception to
5 locate the parking spaces off site because it
6 would just be across an alley. I'm not sure
7 which ones are which.

8 I think each one of those would
9 need to provide two parking spaces because
10 they wouldn't be able to give us the one
11 parking space required for them if they are
12 required one parking space for their
13 residences.

14 If they have it now they have to
15 have the one so it would only be if you had
16 two parking spaces would you be able to give
17 us one of them for use by the applicant of the
18 child development center.

19 CHAIRPERSON LOUD: Just on that
20 note, have you actually seen the pictures that
21 they submitted?

22 MR. MORDFIN: I've seen --

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1 CHAIRPERSON LOUD: It looks to me
2 like it's two but maybe we should clarify.

3 MR. MORDFIN: Are they both two
4 parking spaces?

5 CHAIRPERSON LOUD: Well, the one
6 exhibit I'm looking at is 6520 which I guess
7 would be directly next door, they show a
8 picture of two garage doors. I don't know if
9 that's sort of a row garage. As a matter of
10 fact, we can establish that on the record
11 today.

12 MR. MORDFIN: No, I didn't see
13 that one with the two parking spaces. In that
14 case, one would be available. If those two
15 parking spaces go to one residence, one would
16 be available for the applicant to use.

17 CHAIRPERSON LOUD: I'm looking at
18 the second one and it looks like -- it shows
19 a picture of one vehicle already parked there
20 so it looks adequate enough for two vehicles.
21 Would you agree?

22 MR. MORDFIN: I agree with that.

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1 I didn't see that and I do agree that does
2 look adequate.

3 Those were my comments on whether
4 or not if the Board determines that a parking
5 space should be provided that it looks like
6 they would meet the criteria for a special
7 exception to locate it off site. It's within
8 the square. It's across the alley.

9 It's convenient to the site. I'm
10 not sure whether or not you could put one onto
11 the property or not because I don't think that
12 we have drawings adequately drawn to scale
13 that could determine whether or not it could
14 be placed there or not so I can't really
15 comment on that.

16 CHAIRPERSON LOUD: Thank you. The
17 bottom line opinion of OP on the variance is
18 that the practical difficulty is not met?

19 MR. MORDFIN: We thought the
20 practical difficulty was met. We thought it
21 was an unusual situation where you have the
22 same people who work there also live there.

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1 (Whereupon, there was a test of
2 the fire alarm system.)

3 CHAIRPERSON LOUD: I guess we're
4 okay.

5 MR. MORDFIN: So we thought that
6 was an unusual situation for this application
7 that you would have the same people that would
8 be both living there and working there. We
9 thought that was unusual and that led to a
10 practical difficulty.

11 If there is already one parking
12 space provided for this residence as required,
13 under the zoning regulations they have to
14 provide a second one that would be used by the
15 same people predominately and we thought was
16 a practical difficulty.

17 CHAIRPERSON LOUD: All right.
18 Let's see if there are any questions from
19 Board Members for OP

20 COMMISSIONER MAY: With regard to
21 the unusual circumstance of the workers
22 actually being residence in the house, I mean,

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1 that is not something that can be guaranteed
2 through the life of this variance I would
3 think. It's like saying the workers work down
4 the street. Well, yeah, they do now but we
5 couldn't write an order that would specify
6 that the workers must live in the house so how
7 do we take comfort in that thought?

8 MR. MORDFIN: I do agree with you
9 that there is no guarantee that in the future
10 the same people that work for this child
11 development center today would be working
12 there tomorrow.

13 That is something to take into
14 consideration that that could change in which
15 case the additional parking space perhaps
16 would need to be leased or whatever
17 arrangements they would make from the
18 neighbors to have that one additional parking
19 space as is required for the day care center,
20 or child development center rather.

21 COMMISSIONER MAY: Thanks.

22 CHAIRPERSON LOUD: Let me just ask

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1 a couple of quick follow-up questions as
2 regards, I guess, the proffer of these off-
3 site spaces just in case we get into that
4 whole issue. Do you think that the current
5 rear yard has unusual topography, grade,
6 shape, size, or dimensions that contribute to
7 perhaps it not being the most convenient place
8 in terms of efficiency of design, etc., to
9 locate rear parking?

10 MR. MORDFIN: I don't think I have
11 enough information to determine that you
12 couldn't put one there. It is a rectangular
13 lot. I think it's a relatively level lot. I
14 know there are two trees back there. What I
15 don't know is the distance from the rear of
16 the house or from the stairs and the porch to
17 the lot line, or rather to the alley line, to
18 know whether or not you could put a 19-foot
19 deep parking space in there.

20 I don't know the exact locations
21 of the trees to know whether or not you could
22 actually put a nine-foot space in there.

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1 Although from the photos it looks like you
2 probably could, I don't think it's
3 sufficiently documented on the drawing that
4 was handed out today to know whether or not
5 you could put one parking space there.

6 CHAIRPERSON LOUD: Okay.

7 Alternatively do you think a determination
8 could be made that locating the parking space
9 in the rear would not be practical because of
10 the lack of appropriate ingress or egress
11 through the existing proposed alley?

12 MR. MORDFIN: The existing alley
13 system, it's 15-feet wide and from other
14 drawings that I have you see there are other
15 people that have garages on those alleys and
16 they are using those garages for parking so I
17 don't know why this one would be different if
18 other houses down adjoining would be able to
19 pull in and out of their garages.

20 CHAIRPERSON LOUD: That's a good
21 point.

22 Then, finally, would it be not as

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1 practical to locate the spaces on site if the
2 location on another lot would result in a more
3 efficient use of land, better design, or safer
4 perhaps ingress or egress and less adverse
5 affect? Would that criteria be met for this
6 case?

7 MR. MORDFIN: It perhaps would be
8 safer to locate it some place else rather than
9 on this lot just because it is on the corner
10 near 8th Street so probably you would want to
11 locate your driveway further to the west so
12 that you don't back out into Van Buren Street
13 when you are pulling out.

14 There may be a tree there but I
15 don't know the exact location of that tree.
16 Maybe DDOT would want to comment on the
17 location of where it would locate the driver
18 and whether or not it would be safe to pull in
19 and out of that location.

20 CHAIRPERSON LOUD: Okay. Thank
21 you. I don't have any additional questions.

22 Board Members, do you have any

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1 follow-up? Okay.

2 Does the applicant have any
3 questions for the Office of Planning?

4 MS. ZEGEYE: No. Just a comment
5 basically in terms of the discussion about the
6 fact that the workers live there. We want to
7 reiterate the fact that this is a home
8 business. Ms. Kimmell moved in there in 2006
9 with the intention of having a business where
10 her entire family could be engaged in and so
11 long as Ms. Kimmell and her family live in
12 there, that is going to be the case.

13 Yes, there is no guarantee as to
14 whether or not in the future that situation
15 will change but we will also like to note that
16 this case has a five year review so within
17 five years she comes back and it's evident
18 that it's the same people, that will answer
19 any kind of questions that you may have as to
20 the workers living there.

21 CHAIRPERSON LOUD: Thank you.

22 MS. SALA: I would ask you to

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1 consider the cost to her and her family when
2 this spot would be available for the same
3 people who already have a parking spot and
4 when there is available parking in the area
5 including off-street parking. I would just
6 ask you to consider what makes sense.

7 MS. ZEGEYE: Finally, just the
8 burden is practical difficulty. I think the
9 applicant has shown that it is practically
10 difficult for her to adhere to this
11 requirement and this requirement can be
12 weighed without significant impact to the
13 zoning regulation and to the public. As a
14 matter of fact, she's serving the public.

15 She's offering very low-cost day
16 care where nearby development centers do not
17 accept government vouchers anymore. She is
18 one actually around her neighborhood that
19 accept government vouchers and provide this
20 kind of service for people who are not able to
21 get that elsewhere.

22 MS. SALA: Part of the reason she

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1 can't afford --

2 CHAIRPERSON LOUD: Timeout.

3 Timeout. You are going to get a chance to
4 have a closing statement and you can
5 incorporate a lot of the remarks. I had
6 allowed a number of the follow-up remarks but
7 this is really the point and I think this is
8 important to you as law students.

9 This is the point where you ask
10 questions of the Office of Planning based on
11 its report. If they are not necessarily
12 specific questions for them but more comments
13 along the lines of what you had shared with
14 us, you can wrap those into your closing
15 statement.

16 MS. ZEGEYE: I just have one
17 question.

18 Mr. Mordfin, you specified that
19 when you made that statement as to the
20 possibility of her building the parking space,
21 you were just looking at, I guess, aerial view
22 of the area and the building plat that was

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1 given to the surveyor which doesn't give you
2 enough information as it is as to whether or
3 not that is a feasible thing.

4 You were not looking at the trees,
5 the fact that she has a porch with stairs that
6 come out and all those things. I'm asking you
7 given the fact that it seems as though that
8 was a passing suggestion, can you truly state
9 it is feasible given the additional
10 information that was provided today?

11 MR. MORDFIN: I can't say
12 definitely that it's feasible to actually put
13 in a parking space but, at the same time, the
14 drawing that you submitted I also can't say
15 that it's not feasible. I don't have enough
16 information to make a determination as to
17 whether you could or could not actually put in
18 one parking space.

19 MS. SALA: What information do you
20 feel you are lacking? There was an
21 acknowledgement of the slope or there being a
22 different height also of --

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1 MR. MORDFIN: I'm aware of the
2 slope. From looking at the drawings it
3 doesn't look like it's a steep slope. Also,
4 I don't have anything drawn to scale that
5 actually shows the location of where the
6 stairs, the porch, the two trees, and the
7 distance between the rear yard to say whether
8 or not yes, you could not put a parking space
9 in or maybe you could.

10 I don't have topography on this
11 either to show that it really does slope
12 downward a lot. The photographs don't look
13 like it really slopes all that much so I don't
14 have enough information to actually make that
15 determination.

16 MS. ZEGEYE: So basically your
17 standing is that you are not suggesting that
18 she can build a parking spot and you're not
19 suggesting that she cannot so, therefore,
20 there really are no suggestions.

21 MR. MORDFIN: Correct. I can't
22 say whether it can happen or it can't because

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1 without the additional information I don't
2 feel comfortable making a determination one
3 way or the other.

4 MS. ZEGEYE: Therefore, we
5 could --

6 COMMISSIONER MAY: Can I interrupt
7 for just a second? I think you need to
8 understand that the burden is on you to prove
9 that you cannot build a parking space there.
10 The fact that he can't prove it one way or
11 another it doesn't help us reach a decision.
12 Really the burden is on you to demonstrate
13 that it is impossible to put a parking space
14 there or extremely --

15 MS. ZEGEYE: It's practically
16 difficult.

17 COMMISSIONER MAY: Well,
18 practically difficult is more than just it
19 would be inconvenient. You haven't done much
20 more -- if you could say that the distance
21 between the stairway and the alley was 16
22 feet, that pretty much seals the case.

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1 MS. ZEGEYE: We just want --

2 COMMISSIONER MAY: We don't have
3 enough information to be able to determine
4 that yet.

5 MS. ZEGEYE: We just wanted to see
6 where the Office of Planning was coming from.

7 COMMISSIONER MAY: Right. I think
8 they told you that.

9 MS. ZEGEYE: We just wanted to
10 understand their position.

11 COMMISSIONER MAY: I understand
12 but you are kind of pushing them too hard in
13 an area where it's not really their case to
14 make. It's your case to make.

15 MS. ZEGEYE: Thank you.

16 CHAIRPERSON LOUD: Thank you. Any
17 additional questions from the Board for either
18 Planning or the applicant? Okay. Very well.
19 I think Mr. May's direction regarding burdens
20 is something to really take to heart in this
21 type of case. The burden is the applicant's.

22 Yes.

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1 MEMBER MOLDENHAUER: Sorry. One
2 point of clarification I wanted to ask
3 Planning.

4 What specifically do you find to
5 be unique about the properties? Is the major
6 point of uniqueness that you are focusing on
7 the fact that the staff members for the child
8 development center live on site or are you
9 looking at other factors, the fact that it's
10 a corner lot? I want to make sure when I'm
11 referring this that I understand exactly what
12 you see as unique.

13 MR. MORDFIN: You are correct that
14 we were focusing on that the same people that
15 worked at the child development center would
16 also be residing there. As for the uniqueness
17 as it relates directly to the property, that
18 doesn't really relate directly to the
19 property. It relates to the operation of the
20 property.

21 MEMBER MOLDENHAUER: A point of
22 clarification. Our obligation is to find a

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1 uniqueness as it relates to the property.

2 These type of relief are given to the property
3 and they run with the land. They don't go to
4 an individual so the reason is just an
5 individual's reason and not the actual
6 property, the topography being unique, the
7 size being unique, certain aspects of the
8 property.

9 We do sometimes allow a confluence
10 of factors for that but I think that to me is
11 a very weak element to kind of then get pass
12 that one point to then go to the other
13 elements, if the major issue would be the fact
14 that the individuals reside at the property
15 and not topography.

16 I think the issue is you don't
17 really -- do you know the topography? I think
18 that is one of the elements that we're
19 lacking. We don't actually have specific
20 topography or additional information in the
21 record.

22 MR. MORDFIN: I've not seen any

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1 topo on this site.

2 MEMBER MOLDENHAUER: Okay. I
3 think that is one of the elements that the
4 applicant's attorneys have been referencing
5 but we don't have specific documentation to
6 prove or to point to that as a unique aspect.
7 Thank you.

8 CHAIRPERSON LOUD: Thank you,
9 Board Member Moldenhauer.

10 If there are no additional
11 questions this is the point in the proceeding
12 we would turn to the ANC. I don't believe
13 they are here for their report. I believe the
14 ANC did meet on this and they did submit
15 something.

16 I think the most understanding I
17 have is what they submitted initially didn't
18 meet all of our requirements for great weight.
19 A request was made of them to resubmit it and
20 I'm not sure if we did receive a resubmitted
21 ANC report.

22 MS. BAILEY: Mr. Chairman, as far

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1 as I know there isn't a full report. We do
2 have documentation concerning when they met
3 and so forth.

4 CHAIRPERSON LOUD: Okay. Then in
5 the absence of a full report we'll just note
6 that we have the documentation regarding when
7 they met and the actions they take but we will
8 not give that great weight.

9 Now if there -- yes, I saw that e-
10 mail. If there are parties or persons in
11 support, parties or persons in opposition and
12 they are in the audience, this would be the
13 time to come up and give our three minutes of
14 testimony. I don't see anyone coming up so we
15 would turn now back to the applicant for any
16 closing remarks. Following that we'll make
17 some decisions here regarding next steps.

18 Before you do that, it might be
19 good for you to address -- thank you, Ms.
20 Monroe -- the question of the ownership of the
21 property. The property is listed as 6524 8th
22 Street, N.W.

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1 In one of the submissions from the
2 applicant, Exhibit 41, had an e-mail
3 attachment on it, a website download, that
4 indicated the owner as a John O. Coleman. In
5 order to be before us with an application we
6 would need the owner or, I think, absent the
7 owner some authorized consent from the owner
8 so perhaps that issue could be addressed.

9 MS. KIMMELL: This gentleman was
10 the person who sold the house to my husband,
11 Mr. Coleman.

12 CHAIRPERSON LOUD: Okay. Board
13 Member Moldenhauer is indicating it looks like
14 it's an old copy of a download tax record. I
15 don't see a date on it.

16 MEMBER MOLDENHAUER: I would say
17 just for the record that this is a City Atlas
18 report that is provided by the D.C. Government
19 and sometimes these may be out of date. They
20 usually pull their information from the online
21 recorder of deeds or from OTR and maybe there
22 was a problem with that.

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1 Again, if you are putting
2 something in the record, take a look at the
3 documentation because that may create some
4 ambiguity on our part and we have to make sure
5 that in reviewing the record in the past or in
6 the future that all the documentation show who
7 the current owner is.

8 CHAIRPERSON LOUD: Very well.
9 Thank you both, Ms. Monroe and Board Member
10 Moldenhauer.

11 It's your testimony under sworn
12 oath that your husband is the current owner of
13 the property?

14 MS. KIMMELL: I bring some
15 comments for all of you. I would like to read
16 if you permit.

17 CHAIRPERSON LOUD: Sure.

18 MS. KIMMELL: Okay. Good
19 afternoon everybody and thanks for the
20 opportunity to express my position. Because
21 of the recession of our country the economic
22 situation is getting harder and harder for

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1 everybody and especially for parents that are
2 looking for somebody with a license to take
3 care of their children.

4 Actually, our center for daily
5 care is full and with a waiting list. After
6 finding a safe and secure place for their
7 children, the parents can look for a job.

8 That is happening with our
9 community. Actually, I have a long waiting
10 list for the future. Parents call me every
11 single day for an open space. Right now I am
12 counting on your help and support so together
13 we can help our community to fight against our
14 economic crisis.

15 And to clarify, I am not doing
16 this just for the income because working with
17 parents' voucher. My income is very, very low
18 and if you want to verify this information,
19 you can. When I see the issue of the parking
20 space I feel that I can help the community.
21 Even worse our country because building a
22 parking place in my property is a step for me.

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1 Right now I'm not getting a high
2 income to afford an investment of that money
3 and we were looking for a way to fill up the
4 request which wasn't easy. I asked my
5 neighbors for help and they offered me their
6 own parking garage. In this case I need it so
7 children and parents depend on your support
8 and help because without your support we can't
9 do anything.

10 I am trying to help the children
11 on the waiting list. Right now all teachers
12 live with me in the home and we have no need
13 for additional parking. If we do ever have to
14 hire someone from outside of the home, I can
15 require that they take public transportation.
16 Thank you.

17 CHAIRPERSON LOUD: Thank you. We
18 appreciate that. Now I guess we'll turn to
19 your counsel.

20 Is there any additional closing?

21 MS. ZEGEYE: Well, we just
22 basically want to reiterate the fact that Ms.

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1 Kimmell has gone beyond, I think, what usually
2 people do in terms of trying to get the
3 support of her neighbors, get the support of
4 the ANC for this expansion and special
5 exception and variance request.

6 We feel as though she has met the
7 burden for both. We won't get into the
8 special exception but for the variance we feel
9 as though her property is unique both in terms
10 of the age of the house, the way it's formed,
11 the trees, and the fact that it's a corner
12 house.

13 We also believe that requiring her
14 to construct a parking space is going to be
15 extremely burdensome economically for her. We
16 would like to point to the uniqueness of her
17 case where the teachers live there so they
18 don't require a parking space. As long as
19 this is a home day care that she's operating,
20 that is going to be a reality that will
21 continue with the business.

22 She has a lot of support. She

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1 looked for mitigating circumstances and she
2 found a couple and I think she ought to be
3 applauded for it. We really hope that you
4 take all this into consideration when making
5 your decision. Thank you.

6 CHAIRPERSON LOUD: Thank you very
7 much. We appreciate your presentation and
8 your organization of the information in both
9 of the hearings that we've had as well as your
10 witnesses.

11 I think we have a couple of
12 different options here. We can deliberate
13 today if we feel like both the record is full
14 enough and that we have managed to make our
15 way through all of the record and are prepared
16 to analyze it and walk through it.

17 Second option is we can put it for
18 decision at a later date. I think we have
19 some room on our calendar next Tuesday. Then
20 a third option, and the applicants have kind
21 of alluded to this throughout the proceeding
22 but haven't really addressed it head on, is

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1 that you can consider amending your request
2 for relief to include relief under Section
3 2116 which is a special exception.

4 It's a lesser standard than a
5 variance and you've submitted into the record
6 some options, off-site parking options, that
7 arguably might satisfy the parking requirement
8 in this case. I'm not saying that they
9 definitely would but that's an option that you
10 have.

11 It's not something the Board can
12 force you to do. You would have to do that if
13 you decide you want to do that. If you want
14 to do that, you can do that today. You could
15 amend just by verbally saying that you amend
16 on the record.

17 My thought is I want a little more
18 time to review everything including some of
19 the sort of late submissions and maybe set it
20 for decision next Tuesday and then to hear
21 from the applicant one way or the other if we
22 are looking at a straight variance issue.

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1 I'm also not really prepared to go
2 through all the 205 stuff and I think we would
3 probably have to do that for the decision
4 today as well as the variance stuff. That
5 would be my thinking.

6 MEMBER MOLDENHAUER: I definitely
7 think that this case should not be decided
8 today. There are some additional
9 documentation that I think may help us. I
10 think right now it's either not meeting the
11 standard in my view, or it's just barely
12 squeaking by.

13 In order to try to assist the
14 process and make sure maybe we have more
15 documentation that could help, I would want to
16 maybe see an actually to-scale layout with
17 more dimensions of the space. I would want to
18 see a topographic picture of the area and that
19 is something that the applicant wouldn't have
20 to pay for.

21 There are online services and a
22 lot of different types of maps that you can

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1 get of the area that would show the topography
2 for us so that we can understand or, at least,
3 have certain things in the record that would
4 potentially show that there is a grade change
5 in the rear that would make it more
6 practically difficult.

7 One, it would make the property
8 more unique and then, two, would create a
9 practical difficulty in regards to the cost to
10 level out the property or to provide parking.
11 I think those two things would definitely
12 assist me in making the case.

13 CHAIRPERSON LOUD: Thank you,
14 Board Member.

15 Are there other Board Members with
16 thoughts on this?

17 COMMISSIONER MAY: I'm sorry. Go
18 ahead? Okay. I guess I would say that there
19 isn't enough information, I think, to decide,
20 frankly, in favor of the variance on parking
21 at this point. If there were additional
22 information that were presented that proved

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1 that it really was truly difficult to build
2 the parking space in the backyard, then I
3 might be persuaded on that.

4 Frankly, I think it doesn't look
5 that difficult. It looks like the dimensions
6 are there. It looks like you don't need to
7 excavate the entire yard and dig out a big
8 flat space there. You probably can ramp it up
9 gently so you are only excavating three or
10 four feet in and then ramping up and laying in
11 some pavers on gravel.

12 It's not a hugely costly venture
13 to build a parking space in a circumstance
14 like that. I've seen it done dozens of times.
15 I think they still have to prove that somehow
16 that is truly difficult.

17 Now, when it comes to the standard
18 under 2116.6 or whatever it is, the special
19 exception to locate the parking space off
20 site, if there is an arrangement or they can
21 have an arrangement where another parking
22 space is available nearby and that could be

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1 recorded in some way appropriately in this
2 decision.

3 I think they can meet that test
4 very easily. The standard that I will look at
5 is that it's the forth test when you were
6 reading through them before, Mr. Chairman, the
7 fourth test in that the landscaping would be
8 far better not to be touched.

9 It could be located elsewhere and
10 you have an improved landscape on the grounds
11 whether it's for use of the grandchildren or
12 the use of the children in the child care
13 center. Either way I think it's easy to meet
14 that test. In fact, if they wanted to go
15 ahead and amend the application right now, I
16 would be ready to go ahead and decide now.

17 CHAIRPERSON LOUD: Thank you,
18 Commissioner May. Any additional thoughts?

19 MEMBER SORG: Actually, that's
20 exactly what I was going to suggest. I agree
21 with Mr. May. Also it looks like most of the
22 work has been done to meet the requirements,

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1 as far as I understand them, for the off-site
2 parking.

3 But I think that if the applicant
4 were to go forward and come back with this,
5 they would be well advised to take a couple of
6 comments from Ms. Moldenhauer and Mr. May into
7 account that I think there are some possibly
8 compelling arguments that have to do with the
9 future use perhaps of the recreation space and
10 the cost here, but I don't think they have
11 been made in a way that we can really rest
12 that much on them.

13 I also do agree from what we have
14 seen here, which I think has been said, is not
15 exactly enough to tell one way or the other
16 but my gut feeling is that the practical
17 difficulty based on the topography of the
18 property is not necessarily an easy thing to
19 show.

20 CHAIRPERSON LOUD: Thank you. So
21 we now are at the same kind of crossroads I
22 think we were a little bit earlier. There is

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1 a variance test and it's a pretty high
2 standard for the variance test. We kind of
3 got an inkling of where different Board
4 Members are on that.

5 On the other hand, what we are
6 trying to get at here is a requirement for one
7 off-street parking street. There's more than
8 one way to skin a cat. There is, as Mr. May
9 indicated, this special exception that would
10 allow satisfaction of that required parking
11 space but that would take an amendment from
12 the applicant that authorizes this Board to
13 review this as a special exception.

14 Mr. May indicated further he would
15 be willing to support that today. I'm not
16 quite there. I think it's a very strong case.
17 I just need a little more time to pull all my
18 information together in terms of walking
19 through the whole 205 piece and then the 2116
20 piece. I think as early as next Tuesday I
21 would be ready to walk through it like that.

22 MS. NAGELHOUT: Can I just

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1 interject for a second?

2 CHAIRPERSON LOUD: Yes.

3 MS. NAGELHOUT: If the young
4 ladies would like to amend, I think they
5 should be given a few minutes to look at the
6 language of the special exception so they know
7 what they're amending and what they're saying.
8 What I'm thinking is maybe if you want to
9 break I can give them the regs.

10 They can sit down for 10 minutes,
11 look at them, see if it would be a reasonable
12 approach they would like to take and confer
13 with the professor. If you are going to
14 decide next week, we need to know now what
15 we're deciding. Otherwise, you can put it off
16 a week and then put the decision off. It's up
17 to you but I think they need to look at the
18 language of the special exception.

19 CHAIRPERSON LOUD: I think that is
20 a reasonable request. Would you like an
21 opportunity to review this a little?

22 MEMBER MOLDENHAUER: Before they

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1 take a look at it I want to make sure they are
2 aware that if the application was amended a
3 special exception for off-street parking is a
4 lesser relief request so there would not be a
5 requirement for additional notice.

6 Your parking variance notice would
7 be sufficient for any amendment so there would
8 be no concern about needed to renotice the
9 community for that change. If you did decide
10 to amend the application, we could then go
11 forward even as early as next week and make a
12 decision on the case.

13 MS. ZEGEYE: Let's look at the
14 regs.

15 CHAIRPERSON LOUD: All right. Why
16 don't we break for maybe five minutes. Ten
17 minutes? Five? Ten? You guys are quick
18 studies but if you want to, we'll do 10.
19 Let's break for 10 minutes.

20 (Whereupon, at 3:35 p.m. off the
21 record until 4:00 p.m.)

22 CHAIRPERSON LOUD: Good afternoon.

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1 We are back in session on the final case of
2 the afternoon, Case No. 17975. I think we
3 wanted to turn back to the counsel for
4 applicants regarding proceeding forward.

5 MS. SALA: We wish to request
6 amend to request a special exception under
7 2116.6.

8 CHAIRPERSON LOUD: Okay.

9 MS. SALA: And we also wish to ask
10 if there is any other questions specifically
11 you have that we should be prepared for.

12 CHAIRPERSON LOUD: All right. I
13 think that's a great way to sort of end where
14 we are now because once we decide that we're
15 going to go into the deliberation, you
16 wouldn't have a chance to ask any questions.
17 Let's see if there are any questions that
18 Board Members have before we decide to do what
19 we're going to do.

20 I don't think so. I don't believe
21 there are any questions. With the request for
22 an amendment we will now formally put that

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1 into our record and the application is
2 formally amended to seek relief in addition to
3 205 under 2116 for the location of required
4 spaces off site.

5 I think we probably can deliberate
6 this case today. I'll start us off and
7 officially close the record. I don't think
8 that we need any additional information since
9 we are going to take a look at this as a
10 Section 2116 case.

11 This is a request for relief under
12 Section 205 for a child development center in
13 the R-1-B District. With respect to the 205
14 criteria the record before us indicates that
15 the applicant has put together a strong case
16 for Section 205 relief. I'm not going to go
17 through each element of 205 but I'll touch
18 upon the ones that I think help the applicant
19 meet its burden.

20 Under 205.3 the facility needs to
21 be located and designed to create no
22 objectionable traffic conditions nor unsafe

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1 conditions for pickup and drop off. As
2 indicated in the OP report the center is
3 located such that there is no violation of
4 Section 205.3.

5 In fact, the DDOT submitted a
6 report indicating that there would not be any
7 unsafe conditions for pickup and drop off, nor
8 objectional traffic conditions. It is pretty
9 significant that the DDOT report so stated.

10 In addition to which on-street
11 parking is available for parents to pickup and
12 drop off children and that would be on either
13 8th Street or Van Buren Street, very close to
14 the subject property. The center will provide
15 sufficient off-street parking spaces to meet
16 the reasonable needs of teachers, other
17 employees, and visitors.

18 In this case there is a
19 requirement for one parking space since there
20 is a staff of four. We'll come back to that
21 when we talk about Section 2116 relief.
22 Section 205.5, the center facility including

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1 any outdoor play area shall be located and
2 designed so that there is no objectional
3 impacts on adjacent or nearby property owners
4 due to noise, activity, visual or other
5 objectionable conditions.

6 In this case the evidence is that
7 none of the adjacent neighbors have objected
8 to the location of the facility. In fact, one
9 of the adjacent neighbors is offering her rear
10 parking pad for the project and that indicates
11 that there is no objection there.

12 In addition to that, the ANC has
13 indicated that they support the project,
14 although for technical reasons it may not
15 receive great weight but that is further
16 indication of meeting 205.5.

17 Under 205.6 the Board can require
18 special treatment in the way of design,
19 screening of buildings, planting and so on and
20 so forth. In this case the Office of Planning
21 doesn't recommend and I don't believe any
22 Board Members have any recommendations in that

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1 regard.

2 205.7, an off-site play area has
3 to be located so as not to result in
4 endangerment to individuals in attendance at
5 the center or facility, particularly in
6 traveling between the facility and the play
7 area.

8 In this case the applicant will
9 use Takoma Rec Center at 300 Van Buren Street.
10 It's going to be an off-site play area,
11 testimony being that the rear yard is not
12 sufficient for that at present. The students
13 will be brought there under the supervision of
14 facility staff. The playground at the rec
15 center is fenced in and there is a gate to
16 control access and further protect the
17 children.

18 As indicated the staff members
19 will walk the children there and there is
20 notably a public sidewalk available for the
21 whole walk. Sometimes in these cases young
22 people have to walk on dirt roads or there are

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1 unpaved sidewalk but that's not the case here.

2 There is a requirement that the
3 Board can approve more than one child/elderly
4 development center within 1,000 feet of
5 another if there are no adverse traffic
6 impacts. It doesn't apply here because
7 according to the evidence in the record,
8 notably the OP report, there isn't any other
9 child development center within 1,000 square
10 feet.

11 205.9, the Board needs to refer --
12 the Board is the BZA -- refer the application
13 to the Departments of Transportation, Human
14 Services, Aging and Planning for review and
15 written reports. In this case it happened
16 with respect to the Department of
17 Transportation and Human Services. I think we
18 typically send it out to OSSE for that
19 response.

20 Office of Aging that only applies
21 if we are talking about elderly care. We're
22 not talking about that here. In this case

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1 OSSE did submit a report recommending approval
2 of the application. That was dated July 24,
3 2009 and it was signed by Valerie Ware who
4 runs that office is very familiar to those of
5 us here at BZA so it meets that criteria.

6 As I indicated, DDOT submitted a
7 report that has not found any adverse traffic
8 impacts or potential for adverse traffic
9 impacts. Then 205.10, the referral to the DHS
10 shall request advice as to whether the center
11 can meet all licensing requirements and,
12 again, it's indicated in the OSSE report there
13 is a full recommendation for the project to be
14 approved by the BZA.

15 With respect to the park relief as
16 indicated, there is a required parking
17 requirement for one space on site, a couple of
18 different ways to get at providing that one
19 space. One of the ways we talked about
20 earlier, and I think the applicant came
21 prepared with a briefing on that, and that was
22 a variance from the requirement.

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1 An alternative way is under
2 Section 2116 which is a mechanism that allows
3 through special exception the location of a
4 required parking space off site. Because it's
5 a special exception it's a lesser burden than
6 the variance. A number of Board Members
7 thought that the evidence was really, really
8 going to be difficult for the variance.
9 However, some of the requirements that would
10 be really germane to a variance are not needed
11 for the special exception.

12 Under the special exception that
13 we are taking a look at, one of the ways that
14 the Board can find an off-site parking
15 requirement satisfies the overall requirement
16 is to make a determination that it's not
17 practical to locate the spaces in accordance
18 with the on-site requirements for the
19 following reasons. Four reasons are listed
20 and they are listed in the alternative so that
21 you don't have to have all of these. It's not
22 in the conjunctive but just one of the four

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1 will do.

2 Under 2116.6(d) one of the ways in
3 which the requirement can be met under the
4 special exception is that the Board makes a
5 determination that the location of required
6 parking spaces elsewhere on the same lot or,
7 in this case, on another lot would result in
8 more efficient use of land, better design or
9 landscaping, safer ingress or egress, and less
10 adverse impact on neighboring properties.

11 I think the testimony in response
12 to some questions that I asked Mr. Mordfin
13 this afternoon was that it would probably be
14 a more efficient use of land to locate the
15 parking space off site and would certainly
16 result in better design and/or landscaping to
17 not have to butcher those three trees that are
18 currently in the rear of the property. I
19 think the Board can safely make a
20 determination that 2116.6(d) is met.

21 Then the other requirements of
22 2116. I'm not going to go over each of them

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1 in great detail but 2116.7 says there is a
2 preference when you are going to locate a
3 parking space off site. To meet a required
4 parking space that it be separated only by an
5 alley from the lot upon which the building or
6 structure is located or on an adjacent lot.

7 I think in this case 6620 8th
8 Street is directly next door to 6524 8th
9 Street so it's adjacent to the property. Mr.
10 Mordfin wanted to make sure that we were
11 mindful that there has to be sufficient
12 parking for the required parking for that off-
13 site location; that is, one space for the
14 residential as well as space that the
15 applicant would use.

16 We saw through the exhibits that
17 had been submitted that both with respect to
18 the property that belongs to Francis R. Yates,
19 6520 8th Street, that there was sufficient
20 parking for two parking spaces and especially
21 with respect to the property that belongs to
22 Mr. Velasquez -- I believe that's the

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1 pronounciation -- at 6512 8th Street, that
2 there were spaces for two vehicles.

3 Both of these neighbors indicated
4 in written and signed statements that they are
5 willing to offer the applicant the access to
6 and use of their off-street parking spot. I
7 believe that satisfies the requirements under
8 2116. With that let me open it up to other
9 Board members for any thoughts.

10 COMMISSIONER MAY: Mr. Chairman, I
11 would say that you summarized things very well
12 and I think addressed the thorniest issue
13 which was the parking. I think the
14 circumstances of the parking space was a real
15 struggle to consider that as a variance but
16 under the special exception test to assign the
17 parking to an off-site location nearby I think
18 is certainly better designed and more
19 efficient use of land and will look better and
20 meets the requirements that we have so I think
21 it's the right way to go.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 May.

2 Are there others?

3 MEMBER MOLDENHAUER: I would just
4 make a general comment that I think that the
5 two young attorneys did a great job. I think
6 that they presented a very solid case and it
7 sounds like from the deliberation, which I
8 concur with the Chairman, that there will be
9 a positive result for their client.

10 I think that it was a great
11 learning experience for you. I think as
12 another attorney some recommendations would be
13 always have copies for all of the Board
14 Members or, if you're in a court of law, for
15 opposing counsel and for the judge and
16 everything to that effect whenever you come
17 prepared with something.

18 Always go through and try to
19 present -- here exactly I know that Chairman
20 Loud provided some procedural aspects. I
21 think it's good to go and sit in and watch a
22 procedure at one point in time. That way you

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1 know kind of what process is going next.

2 We follow a very stringent process
3 where we go from one person and then to OP and
4 then questions and things to that effect and
5 you ended up asking some good questions to OP.
6 That was just something that maybe if you had
7 kind of taken a look at something at another
8 hearing would have been a great opportunity.
9 Again, I think it was a great job and I think
10 it will be a very positive result for your
11 client.

12 CHAIRPERSON LOUD: Thank you,
13 Board Member Moldenhauer.

14 One final note of business is that
15 the Office of Planning recommends a five-year
16 term for the Section 205 relief. I'm inclined
17 to think that is a good condition to impose.

18 So, with that being said, I would
19 like to move approval of Application No. 17975
20 as amended for Section 205 relief to permit a
21 child development center in the R-1-B District
22 subject to the following condition; that

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1 approval shall be for a period of five years
2 and for approval of parking relief under
3 Section 2116 to locate a required parking
4 space off site at the 6520 8th Street, N.W.
5 and alternatively if for some reason that is
6 not available in the future at 6512 8th
7 Street, N.W.

8 Is there further discussion? I'm
9 sorry. Is there a second?

10 COMMISSIONER MAY: Second.

11 CHAIRPERSON LOUD: The motion has
12 been made and seconded.

13 MS. NAGELHOUT: Mr. Chair.

14 CHAIRPERSON LOUD: Yes.

15 MS. NAGELHOUT: Is the parking
16 special exception also termed? I just want to
17 make sure because they are two separate
18 special exceptions.

19 CHAIRPERSON LOUD: Thank you.
20 Yes, it is. Yes, same five-year term.

21 So, again, to clarify, the motion
22 has been made for approval of the application

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1 for five years for the 205 for approval of the
2 parking relief for five years of 2116. I
3 believe it's been seconded. The motion has
4 been made and seconded. Is there further
5 discussion? Seeing none, all those in favor
6 say aye.

7 ALL: Aye.

8 CHAIRPERSON LOUD: There is no
9 opposition but are there any abstentions?

10 Ms. Bailey, can you read back the
11 vote?

12 MS. BAILEY: Mr. Chairman, the
13 vote is recorded as four zero one to grant the
14 application as amended and to include two
15 conditions. The motion was made by Chairman
16 Loud, seconded by Mr. May. Mrs. Moldenhauer
17 and Ms. Sorg support the motion. Mr. Dettman
18 is not present.

19 CHAIRPERSON LOUD: Thank you, Ms.
20 Bailey. Is there anything further in this
21 case?

22 MS. BAILEY: Not for this case,

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1 Mr. Chairman.

2 CHAIRPERSON LOUD: Can we do this
3 as a summary?

4 MS. BAILEY: Summary.

5 CHAIRPERSON LOUD: Okay. Let's do
6 it as a summary order. Again, to echo Board
7 Member Moldenhauer's remarks, very good job.
8 Congratulations.

9 MS. SALA: Thank you.

10 MS. ZEGEYE: Thank you.

11 CHAIRPERSON LOUD: We are
12 adjourned if we have no further business for
13 the day. BZA is adjourned.

14 (Whereupon, at 4:15 p.m. the
15 hearing was adjourned.)

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